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OF THE

LIEUT.-GOVERNOR OF BENGAL

FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

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FOR

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ROK. No. 3192G—200—21-6-30.

PROCEEDINGS

OF THE

COUNCIL OF THE LIEUT.-GOVERNOR OF BENGAL

FOR THE

Purpose of making Laws and Regulations.

Saturday, the 4th January 1879.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble G. C. PAUL, *Advocate-General*,
The Hon'ble C. T. BUCKLAND,
The Hon'ble H. A. COCKERELL,
The Hon'ble A. MACKENZIE,
The Hon'ble J. O'KINEALY,
The Hon'ble AMEER ALI,
The Hon'ble MOULVI AMEER HOSSEIN,
The Hon'ble RAJAH PRAMATHA NATHA ROY, BAHADOOR,
The Hon'ble BABOO MOHINI MOHUN ROY,
The Hon'ble A. B. INGLIS,
The Hon'ble BABOO KRISTODAS PAL, RAI BAHADOOR, C.I.E.,
and
The Hon'ble J. B. KNIGHT, C.I.E.

NEW MEMBER.

The Hon'ble J. B. KNIGHT took his seat in Council.

JUTE WAREHOUSES AND FIRE-BRIGADES.

The HON'BLE MR. COCKERELL asked leave to postpone the motion which stood in his name, namely, that the Bill to consolidate and amend the law relating to jute warehouses and fire-brigades be read in Council. At the last meeting he stated that it was intended to extend the Act to buildings used for the storage of mineral and other inflammable oils, but he found that a correspondence was still going on between the Government of Bengal and the authorities of the town regarding the best means of bringing such buildings

within the scope of the Act; and he therefore proposed, with the permission of the President, to postpone the reading of the Bill.

The motion was accordingly postponed.

STEAM-BOILERS AND PRIME-MOVERS.

The HON'BLE MR. COCKERELL moved that the Bill for the periodical inspection of steam-boilers and prime-movers in the town and suburbs of Calcutta and in Howrah be read in Council. In making this motion, he had little to add to what he stated at the last meeting. Sections 7 and 8 of the Bill contained two amendments which had been introduced on the recommendation of the Steam-boilers' Commission, a body of practical engineers who had had the working of the existing Act in the town and suburbs of Calcutta under their immediate supervision. Section 5 of the old Act only provided that the inspectors should be satisfied that the boilers were in good condition. Now, the object of inspection by competent officers before certificate granted was not only to prevent the use of boilers in bad condition; for, if certificates are only withheld on these grounds, the inspection of new boilers would be almost entirely unnecessary. It was now proposed to give Inspectors under the Act authority to withhold certificates for boilers which, although not unsound, were faulty in construction, and until such alterations as might be considered necessary should be carried out.

The motion was agreed to, and the Bill referred to a Select Committee consisting of Messrs. O'Kinealy, Inglis, Knight, and the Mover, with instructions to report in one month.

PASSENGER BOATS (CALCUTTA.)

The HON'BLE MR. MACKENZIE moved that the Bill to place passenger boats plying within the port of Calcutta under the control of the Conservator of the Port be read in Council. The Bill, he said, was a very short and simple one, the object of which was explained on the last occasion.

The HON'BLE BABOO KRISTODAS PAL said he wished to point out one circumstance in connection with this Bill which appeared to have escaped the notice of the hon'ble framer of the Bill. The Bill proposed to repeal sections 63, 64, and 65 of Bengal Act IV of 1866, the Calcutta Police Act. Section 63 of that Act, amongst other things, provided a penalty for a breach of the conditions prescribed by that section. The section said—"The owner or manjee of a boat plying for passengers without being duly registered, or carrying more passengers, or with a less crew than is stated in the register, or not having the prescribed particulars painted on it, shall be liable, on summary conviction before a Magistrate, to a fine not exceeding fifty rupees." As no provision was made in the Bill in regard to penalties, and as section 63 of the Police Act was being repealed, as far as he could see no penalty could be inflicted for any such offences. Section 2 of the Bill provided that "no boats shall ply for passengers in the port of Calcutta unless duly registered at the office of the Conservator of the Port under such rules, and on payment of such fees as the local Government may from time to time prescribe by notification published in the *Calcutta*

Gazette." He did not know whether it was contemplated to confer power on the Conservators of the Port to prescribe penalties in the rules which they were authorised to issue. He did not think it would be consistent with the Parliamentary Statute to delegate the power to provide penalties to the executive authorities: whatever penalties were to be prescribed should, he thought, be the act of the Legislature. He therefore thought it proper to draw attention to what appeared to be an omission in the Bill.

The HON'BLE MR. MACKENZIE said it would have saved the time of the Council if the hon'ble member had stated to him before the Council met the difficulty which had occurred to him. The rules for the regulation of passenger boats would be framed both under this Act and the Indian Ports' Act, just as the rules for regulating cargo boats had been passed under both the Customs' Act and the Ports' Act. The Indian Ports' Act provided penalties for breach of any rules made under it, and this was considered sufficient. The only object of the present Bill was to transfer the jurisdiction from the Police to the Port Commissioners and to enable the latter to levy fees for registration, which they could not do under the Ports' Act by itself.

The motion was then agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Mr. O'Kinealy, the Hon'ble Ameer Ali, and the Mover.

RECOVERY OF RENT.

The HON'BLE MR. MACKENZIE moved that the Bill for the more speedy realization of arrears of rent, and to amend the law relating to rent, be read in Council. In doing so, he said—" I could have wished, Sir, that a measure of this magnitude had been entrusted to abler hands than mine. Of all subjects that could come before this Council, there is none more important than the Law of Rent, affecting, as it does, the whole internal economy of the province and the well-being of the vast majority of its working population. There is at the same time no subject upon which more diverse views are held and enunciated; none upon which it is more difficult to arrive at indisputable conclusions; none around which party prejudices run more high. A discussion about Indian land rent tends generally to become as warm as a debate in Convocation. I shall hope, however, in what I have to say to-day, to deal as fairly as possible with disputed points, and to avoid the raising of any issues save such as are essential to the matter now in hand.

The Bill, then, which I have the honor to lay before the Council has, speaking generally, two chief ends—first, it is designed to strengthen the hands of the rent-receiver in respect of the recovery of rents really due, and the execution of decrees actually held; and secondly, it attempts to strengthen the position of the cultivating ryot, and to place his tenant right upon a sound and definite basis for the future.

When moving for leave to introduce this Bill, I said something of the difficulties felt by the landholding classes in realising their rents at the present day. I referred, it may be remembered, to the law's delays, and to

the special delays experienced by plaintiff landlords in a Bengal Moonsiff's Court. It may perhaps therefore somewhat surprise the Council to find that the measure now submitted for consideration still leaves the Civil Court as the tribunal to which the zemindar must go. Hon'ble members are doubtless aware that it has frequently been urged upon Government, and was indeed at one time proposed by the Government itself, to remove the cognizance of simple rent-suits from the Civil Courts (to which in all permanently-settled districts they were made over in 1869), and to restore such cases to the Collectors' files. That was the view embodied in the ninth section of Sir R. Temple's draft Bill to amend the substantive law of rent in Bengal, which was circulated and canvassed in 1876. When it was decided to abandon for the present the attempt to regulate by law the economic problem of enhancement, it was still proposed to simplify, as it was termed, the procedure of rent recovery by entrusting to the Revenue authorities the summary disposal of all suits for rent where the claim was undisputed, relegating the parties to the Civil Court whenever it might appear that there was really a dispute between them. Now, Sir, I for one have never been able to see how a double-barrelled procedure of this kind could be described as simple, or how it was likely to facilitate or cheapen the collection of rent. It has always appeared to me that the Civil Court is the proper tribunal to hear and dispose of what are in their essence mere breaches of contract, while the Revenue authorities are those who ought to deal with the difficult local investigations connected with the enhancement of agricultural rents. To say therefore that, where the issue was a mere question of fact as to whether admitted rents had been paid or not, the Collector should try the case, and that, when there were issues as to the capabilities of soils, the prevailing rates of the neighbourhood, the value of produce now and in former times, the Civil Court should try it, was, in the opinion of some of us, to reverse entirely the true theory of jurisdiction in such matters. The view that, if any more summary procedure for realising rent was provided, the Civil Courts should still be left to work it, was in the end formally adopted at a Conference held in July 1877 between His Honor the Lieutenant-Governor, Sir Stuart Bayley, long Commissioner of Patna and Secretary to this Government, Mr. Ravenshaw, then a Member of this Council and of the Revenue Board, my hon'ble friend Mr. O'Kinealy, Legal Remembrancer, the Hon'ble Maharajah Jotendro Mohun Tagore, Rajah Digumber Mitter, and my hon'ble friend opposite—Baboo Kristodas Pal. It was doubtless felt by these eminent authorities that, although there are delays in the disposal of rent-suits in the Moonsiffs' Courts, these are caused in the main by circumstances for which those courts are not themselves to blame. I hope, Sir, that nothing which I have said may have seemed to cast blame upon the subordinate judiciary of this province. For purity of motive, ability, and hardwork, the Moonsiffs of Bengal will bear comparison with any other similar body of Judges in any other country. But they have very often by far too much to do, and they are hampered by a procedure which, however admirable in itself, cannot readily be adapted to the rapid disposal of petty suits. They are, moreover, powerless of themselves

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to make more effective the execution of decrees. The Government has already done something to increase the numbers of the Moonsiffs. It remains for this Council to provide them with a procedure that shall enable them to dispose more rapidly of the rent-suits that must come before them, and to give the decree-holder substantial assistance in realising his dues.

The Bill, which in this respect follows the suggestions of the Conference already referred to, proposes that where a landholder has been actually in receipt of rents at a certain rate, he shall be able to recover arrears at that rate, and when they are not more than twelve months old, by moving the Civil Court to put in force a summary procedure similar to that embodied in the Bills of Exchange Act of 1866 (now Chapter XXXIX of the Civil Procedure Code). It will be seen that under this procedure the landlord has only to file his plaint to secure the issue of a notice to the defendant calling upon him to obtain leave from the Court, within fourteen days of the service of the notice, to appear and defend the suit, failing which the plaintiff will at once obtain a decree. Leave to defend will only be given on the defendant's paying into Court the sum demanded, or on his satisfying the Court that he has a defence, and on such terms as to security, framing, and recording of issues or otherwise as to the Court may seem fit. No appeal will lie from the summary decree on the part of the judgment-debtor unless he deposits its amount with costs, though the Court may, under special circumstances, set aside its own decree and go into the merits of the case.

Now, Sir, it is manifest that this is a most summary, and, as it may seem to some, even a severe procedure; and I have heard some doubt expressed as to whether, in applying in their entirety the provisions of the Bills of Exchange Act to the recovery of arrears of rent, there has not been a tendency to overlook a radical distinction between the classes of facts dealt with in either case. A dishonored bill of exchange or promissory note carries, it may be said, its history on its face; and it is only when a defence is raised which goes absolutely to invalidate the written document itself that a Court would hesitate about giving a decree for the sums thereby clearly shown to be due. But the mere assertion by a landholder in a plaint that the defendant owes him so many rupees as rent is, it has been urged, hardly a sufficient starting of the case to justify the disabilities under which the defendant is placed by the provisions of this Bill, or to shift so entirely the *onus* upon the ryot. The Council will, however, observe that by section 9 of the Bill it is now provided that no suit shall be entertained under it except where it is shown to the satisfaction of the Court that rent at the same rate as that alleged to be due has been paid in respect of the holding for which it is claimed some time within the three years immediately preceding the period for which it is claimed, or that the tenant has agreed by a written engagement, which is still in force, to pay rent at the rate claimed. If this section is not sufficient to show that the landlord must, with his plaint, produce *primâ facie* proof of privity between himself and the defendant, the Select Committee will doubtless amend the Bill. It will be open to them also to consider whether *primâ facie* proof of the defendant's indebtedness ought not also to be required.

I have said that the procedure provided by the Bill for the recovery of rent in those cases which it covers is summary, and perhaps severe. But I must remind the Council that it is tenderness itself as compared with the powers that the Legislature thought fit to confer upon the landholders of Bengal in years gone by. Regulation XVII of 1793 declared it essential to the prosperity of the country and the punctual collection of the public revenue that landholders and farmers of land should have the means of compelling payment from defaulters, without being obliged to have recourse to the courts of justice at all, or to incur, for the recovery of every arrear, the delay and expense necessarily attending a law process. They were vested, therefore, with the most extensive powers of distress and sale, resistance to which was made severely punishable. By Regulation XXXV of 1795 the procedure in distraint became even more summary and stringent, and fresh provisions were added, making under-tenants owing over Rs. 500 liable to confinement after three days' notice to the defaulter and a summary inquiry in the Civil Court. Regulation VII of 1799 carried the matter further, by providing for the issue of *dustuck* and the summary arrest of defaulters and their sureties unless they paid the arrear demanded on service of the *dustuck*. That famous '*Kânûn Haftam*' contained various other 'short ways' of dealing with defaulting ryots, to which I need not refer in detail; and Construction 382 of the Sudder Court declared that the zemindar's right of compelling attendance extended to the power of punishing the recusant. Modified slightly by '*Kânûn Panjam*' (Regulation V of 1812), this law remained in force up to the passing of Act X of 1859, the only change being that the jurisdiction in summary suits for rent was eventually made over to the Collector; and in all cases (as observed by an hon'ble member now present in one of his divisional reports) the proceedings commenced by a strong presumption in favour of the zemindar, equivalent to a knock-down blow delivered upon the ryot. In 1859 the legislative pendulum swung quite to the opposite extreme. Summary arrest of defaulters was forbidden; distraint was so fenced in with difficulties as to become quite impracticable; zemindars were prohibited from compelling the attendance of their tenants to settle accounts or pay their rents, and both parties were relegated to formal suit in the courts, at first in that of the Collector, and since 1869 in that of the Civil Judge. It was the opinion of many competent Judges even at the time that this reaction was too violent; that sufficient consideration was not given to the difficulties of the zemindar's position; that the character of the ryot, say for instance in Backergunge, is not by any means so 'childlike and bland' as to warrant the confidence which the law places in his anxiety to pay his rent as it falls due. As I explained to the Council before, the difficulties of the landlords have become greater year by year, while the pressure put upon them by Government has become heavier, and they stand now urgently in need of assistance from the Legislature. In giving this assistance, however, it is not proposed to revive the process of *dustuck* in any shape, though I must say in passing that the Rent Law of the North-West Provinces, passed in 1874, contains provisions for arrest before judgment that might be with a very little modification shaped into an efficient and, at the same time, duly guarded

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procedure for compelling the personal presence of the defendant and bringing rent-suits to a speedy issue. Personally I should be inclined to attach the utmost importance to this securing of the actual attendance of the ryot before a decree is given against him. Those who know most of our process-serving peons distrust *ex parte* proceedings in such cases altogether. Be this as it may, the procedure laid down in the Bill appears to the majority of those consulted sufficient to effect a radical improvement in the position of the zemindar without trenching unduly upon the liberties of the ryot, or raising opposition upon what I may term sentimental grounds. Doubtless it will effect improvement if it is fairly and intelligently worked by the civil courts, and this we have every reason to expect.

But the zemindar is not to be allowed to turn the summary procedure of the Bill into an engine of oppression and constant harassment. By section 26 we have provided that rent shall fall due only by quarterly instalments, regulated in amount to suit the crops and harvests of each district. Not only does this provision do away with the possibility of recurring suits for petty monthly instalments, but it removes one of the most constant sources of dispute between landlords and tenants. While regulating thus the instalments of the ryot's payments, we have *per contra* allowed interest to the zemindar as a matter of course upon all overdue instalments. In section 27 we have made compulsory a proper system of rent receipts. Without attaching an overweening importance to this improvement—an improvement advocated, I am bound to say, by the zemindars themselves—I believe that it will to some extent help to make the *fact* of payment or non-payment of rent more susceptible of satisfactory proof, and diminish materially the possibility of forgery in connection with rent receipts. Section 10 is designed to remedy the hardship felt by zemindars holding decrees for rent at enhanced rates, who are frequently, on the appeal of the judgment-debtor, kept not only out of the enhanced rent, but also out of that portion of their due which represents the former rent of the holding.

Thus far the provisions of the Bill run mainly in favour of the zemindar.

I pass on now to those sections of the Bill which seek to strengthen and define more clearly the position of the occupancy ryot. In connection with the question of improving the procedure in execution of decrees for rent arrears, it was suggested by various zemindars that it would be simpler and more satisfactory to bring to sale the tenure of the occupancy ryot than to put in force the provisions of the law for his eviction on failure to pay what was demanded of him. There can be no doubt whatever that in very many districts the occupancy tenure has, in spite of Act X of 1859, been openly recognised as possessing a transferable character—a fact accounted for, as I believe, by the practical permanence of the rights enjoyed by many cultivators whose only legal title at the present day is that of ryots having rights of occupancy. It was quite certain that to recognize the tenure as transferable by sale in execution for arrears would in course of time have the effect of making it generally transferable by the custom of the district; and the question naturally arose whether, on grounds of policy as well as of convenience, it was not desirable

to declare it transferable as well as heritable by direct provision of law. Sir R. Temple wrote thus upon this subject in paragraph 14 of his minute of the 29th August 1876:—

"I find that many zemindars desire that the right and interest of an occupancy ryot shall be liable to be sold for arrears of rent, or for the amount adjudged to be due from him by a decree of court. At present a zemindar can recover such dues by distraint; he can also obtain a decree from the court for evicting the defaulter. I would not have any objection to making the occupancy right liable to sale for arrears of rent, if the zemindars desire it This would not be prejudicial to the occupancy ryots, for the consequence must be that the occupancy tenure would have to be declared transferable by private arrangement (as well as heritable, which it already is). It has never yet been by law declared transferable, though it is believed that private transfers of the tenure are frequently made in some parts of the country. The result would be a certain strengthening of the occupancy tenure, which would in some degree be matter for satisfaction."

The Government of India having before its eyes the complications caused in Western and Central India by the relations between the money-lender and the cultivator, felt some doubt as to whether it was politic to recognise or facilitate the transfer of the ryot's rights in the manner thus proposed. But it appeared to the present Lieutenant-Governor that so long as the transfer is only from one member of the cultivating class to the other, those objections of the Government of India do not in fact arise. In Bengal, as a rule, the transfers are only of this unobjectionable kind.

The following extract from a letter to the Supreme Government, written in April 1877, explains the position taken up by the Lieutenant-Governor in connection with this question:—

"The Lieutenant-Governor believes that the objections to the sale of land in execution of decrees, though in other parts of India they may be entitled to weight, are altogether inapplicable to Bengal; and in this particular instance he believes that it would be acceptable to both parties interested in the question if the Legislature were to attach a right of transfer to an occupancy tenure. At present such a tenure is in some few cases transferable by local custom; but in the great majority of cases if an occupancy ryot is evicted, or gives up his holding, the tenure simply reverts to the zemindar, who can dispose of it as he pleases. To make the tenure saleable would be an undoubted advantage to the ryot, who is at present sometimes compelled to sacrifice a valuable right without receiving any money equivalent. It would raise and strengthen the character of the tenure, and the occupancy ryot would approximate to the position of a small talookdar. On the other hand, it would frequently be a convenience to the zemindar to be able to realize arrears of rent by the sale of the tenure instead of resuming direct possession of the land. It may be added that there appears no ground for apprehending that this measure would have the effect of transferring the land to classes whose ownership it might not be thought desirable to encourage. It is probable that in most cases the occupancy right would be purchased by ryots of the same class and position as the former tenant. The occupancy ryot is, by the nature and terms of his holding, a resident cultivator, and to render his tenure saleable would involve nothing more than the possibility of its transfer from one resident cultivator to another.

"It appears to the Lieutenant-Governor that a decree for rent should cover every right and interest in land of which the judgment-debtor may be possessed, and that the question of the sale of tenures in execution of decrees should rest where it has been placed by the Civil Procedure Code, which has lately passed into law. There seems no valid reason for making the tenure of an occupancy ryot an exception to the ordinary rule."

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The opinions of district officers, Judicial and Executive, and of the Board of Revenue, were sought for, and confirmed with remarkable unanimity the views above set forth, showing at the same time that the custom of transfer was much more general than the Government had supposed. Doubtless contrary opinions were expressed, and are still held by some; but I say that the great majority of all who have hitherto discussed the matter support the view adopted by the local Government. In deference, however, to the doubts felt by some, and especially by the British Indian Association, the Bill submitted to the Government of India in February last provided only for making the occupancy tenure transferable in execution sales for arrears of rent.

The whole question has since then been maturely reconsidered. I shall hope to place in the hands of the Council very shortly a selection of papers bearing upon this point, in which will be found, I trust, sufficient vindication of the Government action in now deciding to propose that the tenure shall be generally transferable as well as heritable, provided only that the transferee is a genuine cultivating ryot. I should wish, however, upon this occasion, to be allowed to urge upon the Council, on my individual responsibility, certain considerations which seem to me to support and justify the present policy of the Government in this matter. We are constantly told now-a-days that the occupancy ryot is merely a metamorphosed squatter, an excrescence created by modern law, whose very existence is an encroachment upon the rights of the zemindar, and the recognition of whose tenure amounts to a practical confiscation of zemindari property. Now, I am perfectly willing to admit that the rule of prescriptive occupancy introduced by section 6 of Act X of 1859 had the effect of conferring valuable rights upon a class of ryots who, under the law as it stood up to that time, and under the custom of the country as it had always been, had practically no rights. I am ready to admit that the section was based upon a misconception, and was justified by a reference to a supposed state of things in the North-Western Provinces which had really no existence. But those who press this argument too often forget that, inasmuch as the only other privileged ryots recognised by Act X are those who have held or claim to hold at fixed rates from the time of the permanent settlement, it is clear that all that vast body of resident cultivators who had rights of occupancy in the soil, but who were not protected absolutely from enhancement of rent, are now comprehended within the term "ryots having rights of occupancy." I believe myself indeed that the margin of squatters and tenants-at-will incorporated with this class by the operation of section 6 is in most districts so small as to be actually inappreciable. It is absurd to suppose that all the cultivating millions of Bengal, except the few thousands having *maurusi mokurreri* rights, went wandering annually over its plains and *churs*, claiming only the rights of outside *paikashts* until they were taken up and settled by Act X of 1859. In deciding what the occupancy tenure is, and what the occupancy ryot ought to have, we must consider what position the *normal* cultivating ryot of Bengal held with reference to his zemindar. Let me define it in the words of Holt Mackenzie written in 1832:—"The great body of resident cultivators (he said) possess a fixed hereditary right of

occupancy in the fields cultivated by them, or at their risk and charge, their tenure being independent of any known contract. They cannot justly be ousted so long as they pay the amount of value demandable from them; that being determined according to local usage; sometimes by fixed money rates, or rates varying with the quality of the land, or the nature of the crop grown; sometimes by the actual delivery of a fixed share of the grain produce; sometimes by an estimation and valuation of the same; sometimes by other rules; and what they so pay is in all cases to be distinctly regarded as the *Government* revenue or rent, whether assigned to an individual or not, and not depending on the mere will or pleasure of another. In Bengal Proper they are usually called khoodkasht ryots, *and by this class of persons I believe that the greatest part of the lands in the province is occupied.*"

Again, in Sir W. Muir's admirable 'Notes on Tenant Right in all parts of India,' I find that great authority stating that, after taking a comprehensive and exhaustive view of the question throughout India, excepting the Gangetic valley and adjoining tracts, he felt entitled to draw the conclusion that "over the whole country there exists the general law of ryots' right. The individual occupant is either a proprietor or a permanent holder." "Coming now to Bengal (he continues) a careful retrospect leads to two conclusions—first, that tenant right existed in Bengal very much as it did in Central and Southern India; and second, that the zemindar of Bengal had more the features of an official than of a proprietary origin." "The limitations, therefore, proscribed in the Bengal regulations upon the authority of the zemindar were entirely in accord with the tenure actually prevailing * * * *." What he means is this, that although by the permanent settlement Government has changed entirely the status of this *quondam* official zemindar, and given him an estate in the soil, and proprietary rights which it would now be folly to deny, there are still other classes having estates in the soil which no Government measures can justly confiscate, and which every honest Government is bound to recognize. Its duty is to reconcile if possible the rights of all. "The strength of the resident cultivator's title in Bengal (goes on Sir William), assessed though he was at (what are sometimes termed) full market rates, and indeed at rates often higher than those of the non-resident tenant-at-will, is testified on every hand." "I am satisfied (he concludes), both from analogy and evidence, that the khoodkasht or resident cultivator of Bengal was the ordinary type of hereditary or proprietary ryot common throughout India." Dealing further on with the state of tenures in Benares, he finds that the ryots' tenure there "originally resembled in its permanency and substantial character that of Bengal." "It is possible (he says) to conceive that the two systems, that of the North-West with a strong proprietary and a weak ryottee title, and that of Bengal with a weak proprietary and a strong ryottee title, met each other in the Province of Benares." What the result was we find in another place. "In Benares (he accordingly tells us) it is common for cultivators not merely to sublet, but to mortgage, and even to sell their holdings. Act X of 1859 seems to have had a rather unexpected effect in checking the practice of sale, the idea gaining currency that under that law the transfer of a cultivating tenure was not valid

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without the zemindar's sanction." In fact, throughout his argument he takes the strong permanent occupancy right of the Bengal ryot as the standard by which to measure the position of the village proprietors and cultivating ryots in the North-West; and that such a course was warranted, is clear from various papers appended to his minute, which 'seem to show plainly that the right of transferring hereditary cultivating tenures prevailed in most of the permanently-settled districts both of Bengal and the North-Western Provinces.' From these and numerous other passages to which I might refer, and from a careful study of the Regulation Law, it might, I think, very fairly be inferred that Act X, by lumping together these permanent resident ryots with the new prescriptive tenants created by its own terms, actually did the former a very grievous wrong. The legalised squatter has been come to be taken as the type of the whole. The revenue system of Bengal to a great extent withdrew from the cognizance of Government officers the actual relations between the zemindars and their under-tenants, and we have no means of tracing accurately the history of tenant right during all the years from 1793. There is, however, a mass of evidence, with which I shall not trouble the Council, especially in connection with discussions regarding the effect of revenue sales, all tending to show that in spite of the way in which Government neglected him, in spite of *Haftam* and *Panjam*, and many other regulations in which Government, fearing for its revenue, ignored his customary rights, in spite of all the grinding of his zemindar, in spite of Act X and its provisions for enhancement and eviction, the resident cultivator has maintained even to the present day a practically permanent interest in his holding, which he has in nearly every district of Bengal been able to sell and transfer. I find in the minutes of the High Court Judges upon the working of Act X (written in 1864) the following passage from the pen of Mr. Seton-Karr: "That ryotee tenures of all sorts are constantly attached in execution of decrees of the revenue and judicial courts; that such holdings, whether of tenants with absolute and hereditary rights, or of tenants with mere rights of occupancy, are put up to sale by scores and hundreds all over the country, is a fact that admits of no question whatever. It is equally certain that they have a positive marketable value, and often change hands by private transfer—sometimes with the consent of the zemindar, and sometimes in spite of all his opposition." I hold in my hand returns of sales under Civil Court decrees which show that in every district in the Lower Provinces sales of occupancy tenures have been effected without dispute. It is true that the rent law does not specifically recognize this right, and that the Civil Courts interpreting the letter of Act X have frequently denied it. My contention is that in proposing now to recognize it by law, Government is not running counter to traditionary rights and customs, but rather seeking to establish these; restoring, in fact, the old common law of Bengal. I discovered only this morning that in 1865 the Government of Bengal had come to identically the same conclusion.

That the proposal is on other grounds desirable is, I think, capable of proof. We are constantly told that the crying want of the country is agri-

cultural improvement. The great zemindars have in so many cases converted themselves into mere annuitants that it is not worth their while to attempt this. The smaller zemindars and intermediate tenure-holders have not as a rule the capital to carry out large schemes of the kind. It is mainly to the cultivators themselves, therefore, that we must look for the introduction of improved staples and the construction of wells, petty irrigation channels, and the like. At present the ryot has absolutely no inducement to begin any such improvements. Make, however, his holding transferable, and his view of the situation must surely change. He will spend, and even borrow to spend, having now some chance, even if he default in his rent, of recovering by the sale of his tenure some portion of his outlay. If he has to borrow from his mahajun for any purpose, he will do so on better terms, being able to offer more solid security. To those who think that human nature in India is not like human nature elsewhere, and that a cultivating ryot is never likely to seek to improve even a property that he can call in a sense his own, I would cite the facts related by Sir W. Muir of the zemindari of the Raja of Benares. Those Rajas, with far-seeing wisdom, set themselves to foster the occupancy rights of their ryots, recognizing the transferable nature of their tenures. The consequence is thus described—"The ryots' property in the soil (in the Raja's family domains) is so valuable that it fetches sometimes above Rs. 100 per beegha. The occupant expends labour and capital on his holding. The country thrives; no part of the North-West is more prosperous, and the Raja has his reward in a secure and flourishing revenue." The whole history of jungleboorie clearances in Bengal, the condition of vast tracts in Backergunge, Noakhali, Chittagong, and many other districts at the present day, prove incontestably that there is no more zealous pioneer, no more assiduous digger and improver of the soil, than the Indian ryot when his tenure is assured, and that, too, even when his rent seems almost crushing. I need not refer to the mass of evidence showing the working of peasant proprietorship in many parts of Europe. The state of things in Bengal is not identical with that, and the comparison might lead to misconception. I do not, as I have already said, seek to blink the fact that the zemindar has in Bengal been granted an actual estate in the soil, and I should be the last to tamper with any of his known and acknowledged rights. But all history and all legislation goes to show that though an actual, he is not an absolute, proprietor, except as regards his *seer* or private lands; and my contention is at present that the resident ryot has also an estate in the soil, which it is worth our while to define and worth our while to develop. My belief is that this policy is good both for zemindar and ryot. My hope is that the zemindars will themselves admit this. We have, I say, every reason to believe that to recognize the transferable character of the occupancy ryot's tenure in Bengal will improve his position in many ways, and that he will in turn improve the land. He has now had brought to his door that system of primary education for which the name of Sir G. Campbell will be ever honoured. He has throughout many parts of Bengal benefited for some years past by the famines and misfortunes of his neighbours, and by the new and growing demand for a very

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profitable staple. His standard of comfort bids fair in every way to rise, and it seems the duty of Government to do what it can to help and accelerate his material not less than his moral welfare.

But we hold that it is only the ryot who actually cultivates his own lands with his own hands, or by means of hired labor, who is entitled to occupancy rights. We have no desire to see the money-lender coming in and taking possession of the land, reducing the actual cultivator to the position of a serf. Nor do we wish to see the cultivator following the example of the zemindar and converting himself into an idler by subletting his holding to a rack-rented cottier. We believe that an infinity of mischief is being done by the encouragement given to subletting, owing to the construction put by the Civil Courts upon the law as it stands. It is bad enough to have between the zemindar and the cultivator putnidars, durputnidars, seputnidars, howladars, and so on to the tenth degree, without allowing the original cultivator to begin the process over again on his own account. We propose to recognise no subletting and no subdivision of a cultivator's holding without the consent of the zemindar or other rent-receiver; and if the latter consents to subletting by his occupancy ryot he must accept the latter as a middleman, and the actual cultivator under that middleman will begin to acquire prescriptive occupancy rights. This part of the Bill must, however, be carefully considered in Select Committee in view of the existing practice of subletting in certain districts. The sections as now framed are to a great extent tentative only. The Bill also contains a provision for preventing the absorption of ryottee lands into the zemindar's home farm. The resident ryots of the village have historically and legally a preferential right to cultivate the lands within its boundaries. The zemindar is not entitled for the default of one to reduce the area available to all. The very existence of such a thing as *khamar* or *nij-jote*, and the fact that many zemindars hold jotes in their own estates without any attempt to convert them to *khamar*, supports this view. The Bill, however, in fairness to the zemindar compels the registration of all legal transfers, successions, and divisions of occupancy tenures, and permits him to levy a moderate fee upon such occasions, compelling him at the same time to give due effect to them. This, then, is the gist and scope of Part III of the Bill which is now before the Council.

Sections 22 to 25 of the Bill amend the procedure in connection with rent deposits, limiting the time within which they must be made so as to entail penalties on the zemindar, and transferring the duty of receiving and dealing with them from the Civil Court to the Collector. This will be a relief to the Civil Courts and a boon to the zemindars.

Sections 20 and 21 and section 29 of the Bill are designed to improve the position of the landlord in respect of execution of decrees against both occupancy and non-occupancy ryots, and section 30 remedies what is felt to be a defect in the law of distraint. A section has also been added to make the service of process on ryots more certain and satisfactory than it is at present. If there is to be a summary decree for rent, there must be at least reasonable certainty that the fact of suit has been brought to the notice of the alleged defaulter. This is a point of cardinal importance.

These are the chief provisions of the Bill which I have the honor to introduce. They cover, it will be seen, a good deal of ground, and effect a very important and far-reaching change in the Rent Law as it now stands. It would perhaps have been more satisfactory had we been able to take up that Rent Law as a whole, and had we, leaving the question of the grounds of enhancement to be separately dealt with in the manner indicated by me on a former occasion, amended the rest of the law thoroughly upon all other points. It is felt, however, that this, though a most necessary, would probably be a very lengthy task, and it is deemed better to give as soon as possible assistance to the zemindar in collecting his rents and those legal cesses upon land which are realizable therewith. Next session it may, I hope, be possible to take up effectually the general amendment of Act VIII (B.C.) of 1869."

The Hon'ble Rajah Pramatha Natha Roy observed that this was a very important measure, and the Bill was only circulated on the previous day. There were many provisions in the Bill which required careful consideration, and he would therefore move that the discussion upon the Bill be postponed till the next meeting of the Council.

His Honor the President said he thought the request of the hon'ble member was a very reasonable one, because through unavoidable circumstances the Bill was delayed in preparation, and had hardly been long enough in the hands of members to enable them to give sufficient attention to its provisions, and to read through all the papers which had been circulated in connection with it. He had therefore no objection to make to the motion to defer the discussion upon the Bill to the next meeting of the Council, and he thought that course would meet the views of hon'ble members.

The motion was agreed to, and the further consideration of the Bill accordingly postponed to the next meeting of the Council.

EXTENSION OF POOREE LODGING-HOUSE ACT.

The Hon'ble Mr. O'Kinealy moved that the Bill to extend Bengal Act IV of 1871 be read in Council.

The motion was agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Ameer Ali and the Mover.

The Council was adjourned to Saturday, the 11th instant.

Saturday, 11*th January* 1879.

Present:

His Honor the Lieutenant-Governor of Bengal, *presiding*,
The Hon'ble G. C. Paul, *Advocate-General*,
The Hon'ble C. T. Buckland,
The Hon'ble H. A. Cockerell,
The Hon'ble A. Mackenzie,
The Hon'ble J. O'Kinealy,
The Hon'ble Ameer Ali,
The Hon'ble Moulvi Ameer Hossein,
The Hon'ble Rajah Pramatha Natha Roy, Bahadoor,
The Hon'ble Baboo Mohini Mohun Roy,
The Hon'ble Baboo Kristodas Pal, Rai Bahadoor, c.i.e.,
and
The Hon'ble J. B. Knight, c.i.e.

RECOVERY OF RENT.

The Hon'ble Mr. Mackenzie moved that the Bill to provide for the more speedy realization of arrears of rent, and to amend the law relating to rent, be read in Council. He had nothing to add to the lengthened statement with which he had troubled the Council on the last occasion. In discussing the Bill, the Council would do well to direct its attention to the principles involved in the measure than to the actual working of the sections of the Bill. As he had only two days' notice of the fact that the measure would be taken up by the Council, and the sections relating to occupancy rights and some other sections were drafted hurriedly and did not receive that full consideration which they required, he hoped they would be carefully considered in Committee. The principles of the measure had been carefully enunciated by him before, and if there was any ambiguity in the statement that he had made, he hoped that it would be pointed out in order that he might be afforded an opportunity to make any explanation that might be necessary. But the particular wording of the sections might, he thought, be left for consideration to the Select Committee.

The Hon'ble Kristodas Pal said that when leave was asked to introduce this Bill by his hon'ble friend, he took the opportunity to express his satisfaction at the proposed legislation. He believed it was admitted on all hands that an amendment of the procedure for the trial of rent suits was a pressing necessity, and that the increased obligations which had been imposed on the landholders for the collection of the cesses had greatly aggravated that necessity. The Government for the last four years had been promising to introduce a Bill upon the subject, and the present measure he took to be in fulfilment of that promise. His hon'ble friend had just explained that the detailed provisions and the wording of the Bill should be discussed in Select Committee; at this meeting they should consider only the leading principles

of this Bill. He might say at the outset that he generally concurred in the provisions of the Bill, and although some of the details might be open to objection, he thought the Bill, as it had been drafted, was well calculated to fulfil the object aimed at. There was, however, one important principle to which he was sorry he could not give his adhesion—it was the transferability of the right of occupancy. He might remind the Council that, when the Bill was originally drafted by the local Government, there was no provision authorizing the general transfer of the occupancy right. The Government was of opinion that some such provision would be beneficial to the tenantry, but in deference to the opinion of some zemindars, and also of the Government of India, the section was modified, and the sale of the occupancy tenure was limited to execution of decrees for arrears of rent. Subsequently the Government having taken the opinion of experienced revenue officers, had come to the conclusion that the recognition of the general transfer of the occupancy right would prove beneficial to both landlord and tenant, and so in the Bill laid before the Council that provision had been inserted. He must do the Government the justice to say that it had approached this subject with the utmost care and thought. He need hardly say that the question was one the importance of which could not be exaggerated; it affected the vital interests of the agricultural population of Bengal, and it was a question regarding which much might be said on both sides. He confessed that he approached the subject not without great diffidence and hesitation. When he observed that by far the greater portion of the able and experienced revenue officers consulted by the Government, many of the zemindars who had a direct interest in the question, and His Honor the President, thought that a measure of this kind would be beneficial to both landlord and tenant, BABOO KRISTODAS PAL could not conceal that he felt great diffidence in expressing his dissent from their opinion. But as he honestly believed that, however benevolent and praiseworthy the object of the Government, the proposed measure would do more harm than good, he solicited permission to state his objections from the ryot's point of view, that was to say, how it would affect the interests of the ryot, although he did not wish to overlook the zemindar's point of view. He had carefully examined the papers circulated in connection with this Bill, and had also perused the very able and lucid speech with which his hon'ble friend introduced the Bill, and he had thus formulated the grounds upon which the measure was based as he gathered them from those documents:—

1st.—That the proposed measure would give permanence and security to the ryot's tenure.

2nd.—That it would raise the market value of the tenure.

3rd.—That it would hold out to the ryot an incentive to improved cultivation, and give him a direct interest in the improvement of his land.

4th.—That the improved financial position of the ryot would enable him to raise money on better terms.

5th.—That it would relieve him from dependence upon the landlord and the mahajun.

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6th.—That it would introduce amongst the cultivating classes men with better means and knowledge for the cultivation of the land and the protection of their rights.

7th.—That it would enable unfortunate ryots to sell their tenures, and with the sale proceeds to start in business more suitable and remunerative.

8th.—That the right was not new; that it was recognised by custom, to which the proposed measure would only give legal sanction.

9th.—That the transfer being confined to the cultivating classes, and subletting being prohibited, which, however, was not the case now, the actual cultivator of the soil would not suffer.

10th.—That as the value of the tenure would increase by being declared saleable, the zemindar would not suffer, but would find facilities for the recovery of rent in case of default.

He hoped he had fairly summarised the grounds on which the Bill was founded, and he proposed to offer a few remarks in regard to each of them. The first ground was that the Bill would give permanent security to the ryot's tenure. Now he thought, and any one who would carefully read the provisions of Act X of 1859 would allow, that as long as the occupancy ryot paid his rent his tenure was secure; and as under the law the tenure was heritable, that was to say descendible from generation to generation, the occupancy ryot also enjoyed the element of permanence. It was not proposed in this Bill that the occupancy ryot's rent should not be liable to enhancement, or that his liability to regular payment of rent should be in any way relaxed. All that was now proposed was that the ryot should have the right of alienating his property at his own will for his own requirements, or in satisfaction of the rent of the land. BABOO KRISTODAS PAL did not therefore see how this new provision would in any way give greater permanence and security to the ryot's tenure than what already existed under the present law. Surely it would not be pretended that in the right to sell consisted permanence and security, and not in the right to possess and inherit. So much then for the contention that this Bill would give greater permanence and security to the ryot than he now possessed under Act X of 1859.

The second point was that it would raise the market value of the tenure. He did not deny such a proposition. Certainly, if a tenure could be brought to market it would fetch a value. At present, whatever might be the custom in certain parts of the country, under the law an occupancy tenure was only heritable and not transferable, and as it could not be thrown upon the market, it had not a market value; so that if the occupancy tenure was brought to market for sale, it would certainly have a market value, and as the exchange of land would progress, the market value was likely to rise; but would this rise in the market value of the occupancy tenure compensate the attendant evils which he was afraid the ryot would be exposed to? Would the sale proceeds of the occupancy tenure be a sufficient compensation for the ruin which would seize the ryot by the mere fact of the loss of his tenure? The people of this country, it was well known, had a deep attachment to the soil,

and any facilities given to the sale of landed property could not justly be considered as conducive to their best interests and welfare. He was fully alive to the maxims of political economy as to the advantages of the circulation of capital. But they must deal with facts and not with theories; they ought to look to the real circumstances of the country, the sentiments and feelings of the people, to their every day life, to their habits and thoughts; and if it was found that the people were so much attached to the land, and that the loss of the land under the facilities offered for sale would deprive the ryot and his family of the means of obtaining their livelihood, BABOO KRISTODAS PAL did not think that the Legislature ought to take a step which would hasten such an undesirable and unfortunate result.

The third point was that it would hold out to the ryot an incentive to improved cultivation and give him a direct interest in the improvement of his land. Now, hon'ble members were aware that the agriculturists of this country did as much as they could for the utilization of their lands; that they had a keen sense of what was remunerative to them, and that if they found any new staple likely to be more profitable than the old staples to which they were accustomed, they did not hesitate to take to it. This had been seen in the case of jute and seeds, and latterly in the case of tea. Hon'ble members could not be unaware that native gentlemen had lately directed their attention to tea, seeing the large profits made by Tea Companies. Knowing, then, as they did, that the agriculturalists in Bengal were fully alive to their own interests, it was hardly likely that they would neglect them, because they had not the right to transfer their tenures; the occupancy ryot had that interest in the land which fully secured to him the fruits of his own labour. He could now appropriate to himself the whole of the profits he made from his land, subject to the payment of rent, or to the adjustment of rent in case of enhancement. But exclusive of rent, whatever he earned from his land went to his own pocket, and BABOO KRISTODAS PAL did not think that the transferability of the ryot's tenure would make any alteration in his position in that respect. It might be said that the ryot was impecunious, that his resources were limited, and that he could not carry out improvements for want of capital; that, if his tenure were declared saleable or transferable, he would have facilities for raising money upon it, and thus improving his land. BABOO KRISTODAS PAL was prepared to believe that if facilities be offered to the transfer of land, the ryot would get an advance with greater ease; but it was open to question whether such facility to borrow money would prove in the end advantageous to him or not. Improvements which would materially alter the character of the cultivation in the country could not be effected with the small capital at the disposal of the ryot. That required a large outlay, and in so far the ryot's exertions could not prove much successful. As for small improvements, BABOO KRISTODAS PAL thought that, where the ryots cared for such improvements, they were able to effect them without being under the necessity of encumbering their land: indeed, if it came to this, that improvements could not be effected without the transfer of the land, BABOO KRISTODAS PAL would rather have no improvement than give the ryot facilities to improve himself off his land.

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The next point was that the ryot would have a direct interest in the improvement of the land. He had already pointed out that the ryot did now possess a direct interest in the improvement of his land, and *en passant* he might remark that according to custom in different parts of the country the transfer of the occupancy tenure was now going on, and he would ask how far had the ryot availed himself of the custom in effecting improvements? If the intention of the proposed measure was to assist the ryot in raising capital for improvements, he hoped his hon'ble friend was prepared to show that under the operation of the custom already prevalent in several parts of the country the ryot had been able to effect those improvements which it was the object of this Bill to help him to effect.

The fourth question was intimately connected with the third, that the Bill would improve the financial position of the ryot in enabling him to raise money on easier terms. In discussing the third point, BABOO KRISTODAS PAL had in a manner anticipated the fourth. He would only say that the greater the facilities offered for obtaining loans of money, the greater would be the facility afforded to the ryot to encompass his own ruin. He need hardly remind hon'ble members that the tendency of legislation in the other provinces had been to restrict as much as possible the sale of land for debts. Here, on the contrary, it was proposed to offer as much facility as possible for the alienation of land either in execution of decrees or by private agreement. He considered this tendency in Bengal legislation not consistent with what was going on in other parts of the country, not to say that it was calculated to work most mischievously.

The fifth point was that it would release the ryot from dependence upon the landlord and the mahajun. He confessed that he did not clearly understand this point. If it was contended that the recognition of the transferability of the occupancy tenure would so much raise the ryot above want that it would release him altogether from the books of the money-lender and of his landlord, who was sometimes also a money-lender, BABOO KRISTODAS PAL could not subscribe to that opinion. It might release the ryot in one way; it might release him from dependence upon the landlord, because he would be sold out in case of debt, but BABOO KRISTODAS PAL did not believe that that was a consideration which had influenced the introduction of this clause in the Bill.

The sixth point was that it would introduce amongst the cultivating classes men with better means and knowledge for the cultivation of the land and the protection of their rights. He did hope with his hon'ble friend opposite that primary education, which was now spreading rapidly amongst the masses, would gradually enable the ryots to better understand their duties and to protect their right and interests more effectually than they now did; but he hoped his hon'ble friend did not consider that the present cultivators of the soil should be supplanted by another body of men who did not now cultivate the soil. If the present cultivators were ousted from their lands, what would be their means of subsistence? How would they live? Their position then would be simply one of serfdom; they would be pauperised and reduced to serfage.

It was certainly desirable, in the general interests of society, that the system of cultivation should be improved; but he believed it would be acknowledged by all right-thinking men that the means to that end should be through the education and advancement of the existing body of cultivators, and not by supplanting them by a class of small capitalists,—a process which would leave them no alternative but to throw themselves upon the resources of the State in times of difficulty and distress.

The seventh point was that it would enable unfortunate ryots to sell their tenures, and with the sale proceeds to start in new business more suitable and remunerative. This being an agricultural country, the people looked up to agriculture chiefly as a means of livelihood. Agriculture did not require much labour or capital; with a pair of bullocks and a plough, and with his own labour, the ryot could cultivate the soil and make a living for himself and his family. If he had recourse to either trade or industry, he must bring more capital, more labour, and more intelligence. BABOO KRISTODAS PAL did not think that the bulk of the agricultural population were in a position to take to other callings, and in the long run he thought they would find it more economical and remunerative to follow their present occupations than to have recourse either to trade or industry. Men who would not succeed in agriculture he might say in nine cases out of ten would not probably succeed in any other occupation at all; and it was therefore vain to hope that men who had failed in agriculture would, with the sale proceeds of their tenures, be able to start successfully in any other path in life. He need hardly say that when a man had failed in agriculture his tenure would be then probably not worth much, because it was most likely to be burdened with encumbrances and very little would be left to him after satisfying his creditors; so that, in starting in new business under the circumstances mentioned, his capital would be small, and with such small capital it would be idle to expect that he would be able to enter upon a new career successfully. Accordingly the advantages supposed to be conferred on the impecunious ryot by the transferability of his tenure appeared to be wholly illusory.

The eighth point was that the right proposed to be recognised was not new, that it was already in existence according to custom, and that the proposed measure would simply give legal sanction to it. BABOO KRISTODAS PAL did not deny that according to custom the transfer of occupancy tenures was taking place of late years in different districts. On this point there was. however, a wide divergence of opinion. In the first place the High Court, by its Full Bench rulings, had held that an occupancy tenure was heritable, but not transferable. As for custom, it did hardly apply to the modern occupancy ryot, who was the creature of Act X of 1859. The custom referred to in that Act must have had antecedent existence, but the occupancy tenure, founded on twelve years' continuous possession, had had no such existence. The custom upon which reliance was placed was applicable to *khoodkasht* tenures of old, and not to modern occupancy tenures; but for some reason or other, under colour of that custom, transfers, he admitted, were going on. It might, however, be fairly asked that if under custom the transfer

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of the occupancy tenure was already recognised, why was it considered necessary to give legal sanction to it. The answer probably would be that there was uncertainty; that the custom was not everywhere the same; that the rulings of the Courts had not been the same; and that consequently it was desirable and expedient to give legal sanction to that custom. For his own part, if he were permitted to say it, he would suggest that this custom should be correctly interpreted, and that the absolute sale of ryottee tenures should be stopped at once. From the days of the permanent settlement it had always been a moot question whether a person occupying the position of a *khoodkasht* ryot had the power of sale. Practically, however, it was admitted that he enjoyed the right and power of sale, but the *khoodkasht* ryot and the modern occupancy ryot were two distinct individuals. As his hon'ble friend himself said in introducing the Bill, the *khoodkasht* ryot had an occupancy right from the days of the perpetual settlement; but the mere squatter for 12 years was a ryot of yesterday: he had therefore no traditional right and claim on the ground of natural justice. But Act X of 1859 had confounded the two, and had, by conferring the right upon the mere squatter, done a grievous wrong to the resident *khoodkasht* ryot of 80 years ago. This Bill, however, made no distinction between the *khoodkasht* ryot of old and the occupancy ryot of yesterday; it, in fact, gave the right of transfer to both, and, by doing so, Baboo Kristodas Pal for one thought that it offended one's sense of natural justice.

He now came to the ninth point, which was that the transfer being confined to the cultivating classes, and subletting being prohibited, which was, however, not the case at present, the actual cultivators of the soil would not suffer. He must frankly admit that the hon'ble framers of the Bill had taken the utmost care to minimise the evils of the proposed measure. By confining the occupancy right to the *bonâ fide* cultivator, this Bill would give effect to the original intentions of the Legislature in creating the occupancy right. He humbly thought that when that right was conferred by Act X of 1859, it was intended solely for the benefit of the actual cultivators of the soil; but unfortunately by the use of one word "held," wide scope had been given to the provision of the law, and this right, which was intended to be confined to the actual cultivator, had been held to apply to persons in the position of middlemen.

With the decisions of the High Court favouring subletting, the occupancy tenant of these days had become a middleman, a mere rent receiver, and the result had been that the actual cultivator had been the greatest loser. It was the sweat of his brow which supported the whole body of the superior holders, from the occupancy jotedar to the zemindar in the highest link of the chain, and the subletting system, it could not be denied, was detrimental to the best interests of the peasantry. The hon'ble framers of the Bill had therefore done well by confining the occupancy right to the cultivating class, and also by restricting sale to that class, and more substantially so by prohibiting subletting. But the question was whether the Bill, as it had been framed, would really keep out the small capitalist class—he meant the mahajans and petty traders—from

ousting occupancy tenants from their tenures. A cultivator was defined to be he who cultivated the land with his own hands or by means of hired labour. Now that term "hired labour" left, he thought, a very wide door open. He did not mean that hired labour could be dispensed with in the economy of agriculture in this country. Women, children and diseased and infirm men could not be expected to work with their own hands; there were persons who were by rules of caste prohibited from touching the plough, and they must employ hired labour; but when hired labour was permitted, would not the man whom it was sought to keep out come in and cultivate the land? Would not the money-lender come in? It might be said that hired labour was not always remunerative; that the money-lender would not find the employment of hired labour so profitable as to have recourse to it; but there was the system of *bhagjote*—of cultivation in common—between the holder of the tenure and the producer. The usual arrangement was that the person giving the labour and cultivating the land took half the produce and left the other half to the holder of the land. That arrangement would in effect be the employment of hired labour for the purpose of cultivation. The Bill as framed did not mean to discourage or discountenance that system of cultivation. Then it was well known that the *benamee* system prevailed very largely in this country, and rival zemindars, he was afraid, would not be slow to take advantage of the new law and purchase occupancy tenures *benamee* with the view to annoy and harass their rivals. In that way social forces would be brought into play, which might deprive the actual cultivators of the land by which they derived their sustenance; so that, notwithstanding all the safeguards which had been introduced in the Bill, BABOO KRISTODAS PAL doubted whether the land would be really kept in the hands of those who now held it if a general recognition of the transfer of the occupancy tenure were sanctioned by law.

The last point was that as the value of the tenure would rise by being declared saleable, the zemindar would find facilities for the recovery of rent in case of default. Now, he admitted that if the occupancy tenure had a value, the sale of it for rent would satisfy the demand of the zemindar; in that respect he would acquire a facility in the recovery of rent. But had he no other means for recovering his rent? From the earliest times the zemindar enjoyed the right of eviction. By referring to the laws of the permanent settlement it would be found that the right of eviction was inherent in the zemindar, and it was only to protect the occupancy or *khoodkasht* ryot against arbitrary eviction that section 6 of Act X of 1859 was introduced; and the power of eviction was clogged in various ways. It might be said that the eviction of the tenant was a harsh and cruel measure. So it was in the abstract, just as the Sunset Law considered in the abstract was a harsh and cruel measure. But look at the practical effects of the Sunset Law! It had taught the zemindar punctuality, prudence, and providence; it had enabled the State to collect revenue with clock-work regularity, and yet there was the law which many theorists considered was a blot upon the Statute Book, but so far as BABOO KRISTODAS PAL was aware, the zemindars did not complain of it, nor did it practically do any harm to the landed interests. In the

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same way, if the present law of eviction were altered (at present there could be no eviction for default in the payment of rent except at the end of a year), if, in accordance with the provision for quarterly instalments, facilities for eviction in default of such instalments were given, the rent of the zemindar would be recovered with the same regularity and punctuality with which the revenue was realised by Government. It might be asked, would that measure benefit the ryot? If eviction was allowed, then the ryot would go out without receiving anything for the land which he would vacate; on the other hand, if the tenure were sold, the ryot would at any rate get something as a surplus from the sale proceeds after satisfying the arrears due. BABOO KRISTODAS PAL admitted that; but he held that if eviction were allowed for quarterly default, very few tenants would practically go out. The ryot would know that if he defaulted in the payment of his rent his tenure would be resumed, and thus he would lose all he had in the world, and he would therefore be very careful in meeting the landlord's demand, just as the zemindar now was; the latter might beg or borrow, but pay the revenue he must; and it was generally found that before sunset approached the revenue was deposited in the Collectorate. In the same way BABOO KRISTODAS PAL was persuaded that if eviction were allowed, recourse to that remedy for default would become very rare, and so what might in theory be considered a harsh and severe measure would practically operate to the benefit both of the landlord and the tenant.

Having considered the different grounds upon which, as BABOO KRISTODAS PAL conceived, the Bill had been founded, he would just glance at the official opinions upon which some stress was laid by his hon'ble friend in his speech at the last meeting of the Council. He had said already that by far the greater majority of the officials had supported the proposals of Government. But there was a residuum, consisting of some very able, experienced, and distinguished officers, who did hold contrary opinions on the subject. He found in the first place that the Collectors of Backergunge and Tipperah had expressed their opinions against the proposal which BABOO KRISTODAS PAL had been discussing. In the report of the Board of Revenue he read—

"Both the Collectors of Backergunge and Tipperah are of opinion that the sale of occupancy rights to satisfy debts due by ryots should not be legalized. It would introduce all kinds of confusion. Mr. Barton thinks that in Eastern Bengal at least ryots need no further protection, nor further immunities, than they have at present. In many cases, as it is, the ryots are the masters and the zemindars the servants."

Then Mr. Lyall said—

"It is doubted whether the occupancy right would, as assumed by Mr. Reynolds, be purchased in most cases by ryots of the same class and position as the former tenants."

and so he thought it would go out of the hands of the present class of cultivators. Then Mr. Peacock, Commissioner of the Dacca Division, than whom BABOO KRISTODAS PAL believed there was not in the service a more reasonable, moderate, and even-minded officer, did not advocate a general recognition of

the transfer of the occupancy right, but would confine it only to the execution of rent decrees. He said—

"I am on the whole inclined to recommend that occupancy rights should be liable to be sold in execution of a decree for rent when the judgment-creditor applies for execution to issue against such right. It will then rest with the zemindar to adopt this course, if such a sale would be more convenient than the direct resumption of the holding, and not otherwise. As regards the sale by private agreement of such a holding, I see no objection to the ryot being allowed to do so with his zemindar's consent. This would prevent the latter's interests from being prejudiced in cases where he was opposed to such a sale, and, on the other hand, it would not debar such sales from being effected in cases where the zemindar was willing that this should be done."

Such was Mr. Peacock's opinion, though BABOO KRISTODAS PAL for one would not give the power to sell even with the zemindar's consent. Mr. Edgar, Deputy Commissioner of Darjeeling, wrote—

"It seems to me that the question of making occupancy rights transferable by private sale differs in many respects from that of making them liable to sale instead of to ejectment for arrears of rent. The latter, with proper safeguards against fraud on the part of the landlord, would be, I think, an unmixed benefit to the ryot and no injury to the zemindar, while I do not see how in practice it could have a tendency to transfer the land to undesirable classes. I have much more hesitation about the former measure."

Then Dr. Field, an experienced judicial officer, and one who had studied the revenue laws with great care, held that the occupancy tenure should not be sold, except on certain conditions which he had himself recommended for the amendment of the law. And the last, though not the least, was Mr. Hodgkinson, late Collector of Moorshedabad and now Judicial Commissioner of British Burmah, who said—

"It is believed that to make the tenure saleable would (1) be an undoubted advantage to the ryot, and (2) on the other hand it would frequently be a convenience to the zemindar to be able to realize arrears of rent by the sale of the tenure, instead of resuming direct possession of the land. I join issue with both these conclusions."

He then discussed the question at length, and incidentally remarked—

"The first feature of the change which will be made apparent to a body of cultivators, nine out of ten of whom are in debt, is the increased facility with which they can borrow money—a feature not calculated to arrest improvidence among an improvident class. The mahajun will then take care that no other feature is allowed to present itself."

This was a conclusion to which BABOO KRISTODAS PAL endeavoured to draw the attention of the Council in his opening remarks. Then Mr. Hodgkinson pointed out another disadvantage which would flow from the general recognition of the transfer of the occupancy right. In paragraph 15 he said—

"In districts where industries are carried on by European or native capital, requiring for the production of the subject-matter of the industry an amount of land more or less under the control of the capitalist, there would be a great danger of his becoming a large monopolist of land in neighbourhoods where he required it, were occupancy tenures transferable. In the three principal indigo districts of Behar tenures would be bought up all around the factories, the good land put into indigo, the bad land made over to cultivators at comparatively high rates."

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None knew better than the Hon'ble President what a struggle there had all along been between the indigo-planter and the zemindar for the acquisition of land for the cultivation of indigo. As had been justly pointed out by Mr. Hodgkinson, if this facility of acquiring the occupancy tenure were given, the indigo-planter and others who were engaged in manufactures of indigo and other staples would find a speedy means of buying up occupancy tenures. It might be asked how would the planter acquire the tenure, because he would not be a *bonâ fide* cultivator; but the clause which sanctioned the employment of hired labour would help him. He would employ hired labour and would come in the category of an occupancy tenant, and the great disadvantage to the ryot would be this, that where the zemindar and the indigo-planter were at loggerheads, the ryot had at least one person to protect him, either the zemindar or the planter; but when the ryot would come into direct contact with the planter, there would be no buffer between the two, and the ryot would be utterly helpless. BABOO KRISTODAS PAL would not enlarge upon this point, because it had been so well brought out by Mr. Hodgkinson in his letter.

Now he had shown the Council what the balance of official opinion was on this question, and from what he had said it was clear how the case stood. The occupancy tenant was divisible into two classes—firstly, the *khoodkhast* or the old resident ryot; and secondly, the modern occupancy tenant or the ryot of yesterday. The *khoodkhast* ryot had always an occupancy tenure; the modern ryot had not. But the two had been lumped together. The right of transfer of the *khoodkhast* tenure was recognized in many cases in practice, though not distinctly recognized in law; but the modern squatter who had been converted into an occupancy tenant was now proposed to be invested with the right of absolute transfer. The Bill did not make any distinction between the two, and perhaps it would be difficult to make a distinction. BABOO KRISTODAS PAL did not wish to go into the equities of the question as to whether the modern squatter should be allowed to hold the occupancy right or not; but viewing the whole agricultural population as one body, and looking to their actual circumstances, he was constrained to say that the proposed measure would have a most prejudicial effect upon them, as it would encourage them to incur debt, and ultimately to lose their tenures in order to satisfy their creditors. It was observable that the Legislature evinced the most generous sympathy with the agricultural population in all parts of the country. The Civil Procedure Code provided that in payment of debts agricultural implements and cattle should be exempted from attachment and sale; but what would be the practical effect of the present Bill in relation to that clause of the Civil Procedure Code? What good would there be in exempting agricultural implements and cattle from attachment for debt when the land would be liable to be sold and the ryot turned out of his hearth and home? The proposed measure would be thus inconsistent with the tendency of recent legislation for the rest of India, and productive of great injustice to the agricultural population of Bengal.

There was one point to which BABOO KRISTODAS PAL thought he ought to draw the attention of the Council particularly. It was this: that if the sale of occupancy tenures was to be confined to the agricultural classes, the zemin-

dar must always be on the *qui vive* to see that every person who acquired the occupancy right should fulfil the legal condition, namely, that he should cultivate the land with his own hands or by means of hired labour; that he should not in any way use the land for the purpose of receiving rent, and that meant constant watchfulness and perhaps frequent litigation on the one hand, or frequent corruption of the zemindar's amlah on the other. It was not possible for the zemindar to know personally what ryot was actually fulfilling the condition of cultivation of the land; he must leave that task to his amlah or ministerial officers, and these must be always on the look-out to see whether the ryot did fulfil the condition of cultivating the land: in that way a wide door would be left open for continual harassment, annoyance, and litigation.

BABOO KRISTODAS PAL had incidentally alluded to the experience of other provinces on the subject. He need hardly invite the attention of the Council to the report of the Commission appointed by the Government of Bombay for investigation of the Deccan riots some four years ago. That report had since been made the basis of legislation, and he found from the reports of the Council of the Governor-General that the Hon'ble Mr. Cockerell had introduced a Bill the other day for the relief of indebted ryots in the Deccan, the main object of which was to put restrictions upon the sale of land for debt. Well, in the same way the Civil Procedure Code, as he had already stated, had put restrictions upon the sale or attachment of agricultural implements and cattle for debt and upon the sale of land for unsecured debts. He was reading the other day the report of Mr. Elliott, the Famine Commissioner of Mysore, and he came across the following paragraph in that report: it was a very interesting and instructive paragraph. Mr. Elliott said—

"A custom has grown up (not, as far as I could learn, confirmed by any legal authority) under which he possesses a transferable interest in the land he cultivates, and this right of sale and mortgage is being followed by the same baneful results as in other parts of India. The ownership of the land is fast passing out of the hands of those who are directly interested in it. Anyone who, in technical language, "tests the jamabandi,"—that is, who takes the village papers and walks over the fields to compare the actual with the recorded facts,—will learn that this field belongs to a Brahmin at Seringapatam, and that to a revenue official at the head-quarters of the district, and the third perhaps to a trader in Bangalore. Not single fields only, but large blocks of land, and sometimes whole villages, are alienated in this way; and the actual cultivator, the old owner, remains on the worst and most precarious of tenures, a metayer tenancy-at-will, paying half the crop to the distant proprietor. In this way the glory of the roytwari system, the union of cultivating and proprietary rights in one person, is departing from it, and the zemindari system is growing up without a traditionary basis, without historical justification, and without the careful protection of subordinate rights which the experience of three generations has introduced to remedy the evils inherent in the less simple tenure which prevails in Upper India."

BABOO KRISTODAS PAL asked the Council to consider whether, by legislation in this Council, it was desirable or expedient to push the tenantry in Bengal to that condition. There was subinfeudation enough in Bengal, but it was now proposed to prohibit the subletting of occupancy tenures. He thought that was a step in the right direction; but if they sanctioned the sale of occupancy tenures in the way proposed, they would, he was afraid, introduce into

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Bengal the same condition of things which had taken place in Mysore, and which the Mysore Commissioner had depicted in such vivid colours. It might be said that the condition of the peasantry in Mysore, in Bombay, in Northern India, in Central India, was quite different from that of the peasantry in Bengal. He did not quite understand that argument. In what respect did the social and domestic economy of the peasant in Bengal differ from that of his brother in Bombay and other provinces. There was perhaps one cause of difference to the credit of Bengal. The Bengal peasants were not turbulent, and therefore not a source of political danger; whereas in some of the other provinces they were more or less so, and therefore for them it was not considered expedient to allow the transfer of land. But in other respects the condition of the cultivators in all the provinces was the same, and if it was the duty of Government to maintain the peasantry in a happy and prosperous state, the same considerations which induced the Government to bar the sale of land in the other provinces ought to apply to the province of Bengal—

He would also draw the attention of the Council to a feeling which widely prevailed amongst the landed gentry of Bengal in favour of a law of entail.

[His Honor the President observed that the law of entail was hardly a question which was connected with the subject of discussion before the Council, and the hon'ble member should therefore confine his remarks to the question in hand.]

He was merely referring to the subject by way of analogy. He meant that the peasantry of Bengal, by the recognition of the right of occupancy, heritable but not transferable, did practically enjoy that law of entail which the landed gentry had not.

He had noticed at some length what he conceived to be the weak points of the proposed measure. He had done so, he repeated, with the greatest diffidence and hesitation, because he found, as he had already said, the opinions of very able and very experienced gentlemen opposed to his. But he felt very strongly on the subject, and had endeavoured to express his opinion honestly and frankly. The question before the Council was one of the greatest moment to the people of Bengal. It was not a personal question, it was not a party question, it was not a race question, it was not a Government question, but a question which would affect millions at the present day, and probably many more millions in the future. His Honor the President had been anxious to provide means for the support of the people suffering from distress at times of famine or scarcity, and the Government of India had founded an Insurance Fund for that purpose. But the best means of insuring the people from such calamities in his opinion was to place them in such a position that they might by their own exertions be able to cope with them. If, however, facilities were given to the peasantry to part with their lands, they would lose the most potent engine for warding off such calamities. If the land was gone, as the Bengali adage had it, everything else was gone, and taking that view, Baboo Kristodas Pal humbly dissented from the proposed measure, because it would help the ryot to get rid of his land. He did not wish to make any formal

motion, but as the whole question would be discussed in Select Committee, the arguments and considerations which he had endeavoured to advance would, he hoped, be taken into consideration by the Committee.

BABOO MOHINI MOHUN ROY entirely agreed with the hon'ble member who had just addressed the Council, that this Bill proposed to make very substantial changes in the substantive law of the country, and he also shared in the hon'ble member's apprehensions and misgivings as to the probable consequences of such changes. He had intended to make a few observations in connection with this question, but he found that the arguments against the principle of the measure had been put so well by the hon'ble member who preceded him in his exhaustive speech, that he would not weary the Council by going over the same ground. But he would say this, that the matter was beset with considerable difficulties, and was of the greatest importance. He would therefore suggest that this Bill should be referred to a Select Committee without pledging hon'ble members to the principle of the transfer of the right of occupancy as prescribed in this Bill, and thus leave the entire matter open in the hands of the Select Committee.

HIS HONOR THE PRESIDENT said—I will not follow the hon'ble gentleman through his arguments, because they relate generally to points regarding which the views of Government have already been very fully expressed. I was quite prepared to find that there would be some little difference of opinion as to the principles of the Bill, though I hardly expected that it would take the form it has done. As has been correctly stated, the Bill relates to two very distinct and separate principles—one is more directly in the interest of the landlord, the other in the interest of the tenant. The first is intended to give to the landlords more effective, speedy, and summary means of obtaining the rents justly due to them, and to save them and the tenants from the protracted, dilatory, and expensive processes of law to which they are now confined; and as regards this, I am glad to find that there is entire unanimity of opinion in this Council. It is a measure which has been declared necessary in the face of the experiences of the past few years by the most able revenue officers of Government, and by those interested in the collection of rents, and on this point we all seem to be agreed.

As to the second principle, however, there seems to be a decided difference of opinion. I expected to find some opposition to the measure on behalf of the landholders; but I must say I was very much startled to find that the persons who objected to the recognition of tenant-right were not the landlords, but the tenants, and that they had chosen as their mouthpiece my hon'ble friend, who has so long and so ably acted as Assistant Secretary to the Landholders' Association. It seems that on their behalf he has been instructed to represent that by giving greater legal value to a right which they already possess, and by declaring and defining their rights in their tenures, and endeavouring to ensure that those rights are respected by others, they fear that in that we shall be doing them a mischief. We shall, it is said, be giving them something which is of such tangible value that they will be able to raise money on it at 6 or 7 per cent. instead of at 50 or 100 per

cent., and they are apprehensive that the possession of the property and these facilities for raising money on low interest, or at moderate interest, will prove such a temptation to them that they may be induced to involve themselves in debt, and eventually sell their lands to pay these debts; and in this way it is urged on their behalf that, instead of giving them security of tenure, we shall end by throwing all the occupancy tenants' lands into the market, to be bought by bunniahs and money-lenders. Now this is a startling theory; but the remedy proposed on behalf of the ryots, and by the ryots' friend, is very much more startling. We are told that what they really require to give security of tenure and the fullest possible advantage from their tenant right is not a legal and definable definition of that right, with power to obtain the full value for it if circumstances compel them to part with it, but the right of being summarily evicted if they don't pay their rents by a particular hour on a particular day, without receiving the very slightest consideration for the value of the right of which they will be deprived. It is stated on their behalf that if they are rendered liable to eviction, the great principles of prompt and punctual payment of their debts will be impressed upon their minds in such a practical form that we shall never hear anything more of arrears of rent or suits for the recovery of rent.

The hon'ble gentleman proceeded to say that this right to be evicted, which he demands for his clients, would place them in precisely the same position as the landlords, under what he describes as the Sunset Law—meaning the law for the sale of estates for arrears of revenue. Now, I expected to hear my hon'ble friend state that he intended to move for an amendment of that law in such a manner that the zemindars shall be subjected to immediate and prompt eviction from their estates in the event of their revenue not being paid to the minute, without any recourse to sale or transfer, and absolutely without any consideration for the value of their rights. My hon'ble friend, however, was not consistent and logical enough to do this; and if he does, I warn him that I shall be compelled to oppose any such act of spoliation; but obviously till he does this, he cannot compare an evicted tenant to a landlord whose estate is sold for arrears. All that we ask is that the zemindars shall show to their occupancy tenants some of the consideration that they demand for themselves. My hon'ble friend alluded to Mr. Elliott's description of the evil arising from the transfer of landed property in Mysore; but even if Mr. Elliott's conclusions are just and right as regards Mysore, they describe a state of things which could never possibly arise under the Bill now under discussion. Mr. Elliott talks of land being parted with by the ryots to non-cultivating classes, and to a money-lender or Government servant in a distant part of the country; but the most cursory glance at this Bill will show that such a consequence and such a condition of things has been most carefully guarded against and could not possibly arise. The hon'ble gentleman must surely know too much of the people to suppose that a *bunniah* or money-lender would, instead of putting his money out at a rate of interest anything between 20 and 100 per cent., be contented to accept the position of a resident cultivator, facing all the risks of season and market. He speaks of the ryots of Bengal as only

distinguished from those of other parts of India, in so far as they are peaceful, quiet people, incapable of turbulent conduct, and therefore undeserving of consideration and attention on the part of Government. But if I have heard of one fact more than another in the many able letters of the British Indian Association, it has been of the necessity of legislation to meet the turbulent and lawless conduct of the tenantry, especially of Eastern Bengal. I must say that with my long experience of the grievances of the ryots I have never heard any of them express repugnance to tenant-right, or a desire for eviction; but, as I said before, that is an objection raised on their behalf, while no objections of any kind have been raised on behalf of the zemindars; and as we are all therefore of one mind so far that we all desire to guard the ryot in the possession of the land, I think that we may leave the details with which this common object can be best effected to the Select Committee. If an objection had been raised to the principle of the Bill on the score of undue protection of the ryot by those who represent the zemindar, it might have been necessary to come to a vote on the question of principle before reading the Bill in Council."

The motion that the Bill be read in Council was then put and carried.

On the motion of the HON'BLE MR. MACKENZIE the Bill was referred to a Select Committee consisting of the Hon'ble the Advocate-General, the Hon'ble Mr. O'Kinealy, the Hon'ble Mr. Inglis, the Hon'ble Kristodas Pal, the Hon'ble Rajah Pramatha Natha Roy, the Hon'ble Mohini Mohun Roy, the Hon'ble Moulvi Ameer Hossein, and the Mover, with instructions to report in six weeks.

The Council then adjourned till Saturday the 25th instant, and by subsequent order of the President to Saturday, the 22nd February 1879.

Saturday, the 22nd February 1879.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble G. C. PAUL, *Advocate-General*,
The Hon'ble C. T. BUCKLAND,
The Hon'ble A. MACKENZIE,
The Hon'ble J. O'KINEALY,
The Hon'ble MR. AMEER ALI,
The Hon'ble MOULVI AMEER HOSSEIN,
The Hon'ble RAJAH PRAMATHA NATHA ROY, BAHADOOR,
The Hon'ble BABOO MOHINI MOHUN ROY,
The Hon'ble A. B. INGLIS,
and
The Hon'ble BABOO KRISTODAS PAL, RAI BAHADOOR, C.I.E.

JUTE WAREHOUSES AND FIRE-BRIGADES.

The HON'BLE MR. O'KINEALY moved that the Bill to consolidate and amend the law relating to jute warehouses and fire-brigades be read in Council.

The President.

The motion was agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Ameer Ali, the Hon'ble Mr. Inglis, the Hon'ble Kristodas Pal, and the mover, with instructions to report thereon in three weeks.

EXTENSION OF POOREE LODGING-HOUSE ACT, 1871.

The HON'BLE MR. O'KINEALY moved that the report of the Select Committee on the Bill to amend and extend the Pooree Lodging-house Act, 1871, be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

On the motion of the HON'BLE MR. O'KINEALY the Bill was then passed.

PASSENGER BOATS IN THE PORT OF CALCUTTA.

The HON'BLE MR. MACKENZIE moved that the report of the Select Committee on the Bill to place passenger boats plying within the Port of Calcutta under the control of the Conservator of the Port be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. The object of the Bill, he said, had been fully stated on a former occasion, and the slight changes which had been made in the Bill had been explained in the report of the Committee.

The motion was agreed to.

On the motion of the HON'BLE MR. MACKENZIE the Bill was then passed.

The Council was adjourned to Saturday, the 8th March.

Saturday, the 8th March 1879.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble C. T. BUCKLAND,
The Hon'ble H. L. DAMPIER,
The Hon'ble A. MACKENZIE,
The Hon'ble J. O'KINEALY,
The Hon'ble SYED AMEER ALI,
The Hon'ble MOULVI AMEER HOSSEIN,
The Hon'ble RAJAH PRAMATHA NATHA ROY, BAHADOOR,
The Hon'ble BABOO MOHINI MOHAN ROY,
The Hon'ble A. B. INGLIS,
The Hon'ble BABOO KRISTODAS PAL, RAI BAHADOOR, C.I.E., and
The Hon'ble J. B. KNIGHT, C.I.E.

STEAM BOILERS AND PRIME-MOVERS.

The HON'BLE MR. O'KINEALY moved that the report of the Select Committee on the Bill to provide for the periodical inspection of steam boilers and prime-movers attached thereto in the Town and Suburbs of Calcutta and in Howrah be

taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. His Honor the President would remember that the Bill, as it originally stood, was in charge of their colleague Mr. Cockerell, who, on his departure to Europe, placed the Bill in MR. O'KINEALY's hands. The principle which he understood guided Mr. Cockerell in dealing with the Bill was to limit Government interference to an extent that would be necessary to the proper inspection of boilers and prime-movers attached thereto. He trusted the Council would see that the Select Committee had dealt with the matter in the same spirit. Under Section 4 the Lieutenant-Governor had power to make rules and to change them from time to time to suit circumstances. Under Section 9 any person dissatisfied with the orders passed in connection with any boiler or prime-mover might appeal from such order. The appeal might either be on matters of detail or of considerable importance. The Committee had therefore provided that the appellant be authorized to elect the tribunal that should hear his appeal. In small matters the appeal might be laid before an expert appointed by the Government; in matters of importance, the question would be tried by a trained Judge assisted by two experts. So that in every way facility was given for the fair determination of the matters to be decided. One provision in the amended Bill seemed somewhat novel. If the Inspector made an unjust order, and the order was set aside on appeal, the Government must pay the cost of the appeal. On the other hand, if a person preferred an appeal from an order without just cause, and the appeal was dismissed, the appellant must bear the cost. The members of the Committee considered it fair and just that such a clause should be framed to prevent the passing of ill-considered and hasty orders on the one part and needless appeals on the other.

The motion was agreed to, and on the motion of MR. O'KINEALY the Bill was passed.

ENHANCEMENT OF RENT BY SETTLEMENT OFFICERS.

The HON'BLE MR. DAMPIER said Act III of 1878 was so lately passed by this Council that its legal history would probably be fresh in the minds of hon'ble members. They would remember that up to twenty years ago the determination of the share of the public in the produce of the land, that is, the State's demand of land revenue, and the determination of the share of the produce which should be paid by the cultivator, that is, rent, went hand in hand. The settlement officer, before assessing the amount of revenue to be demanded, ascertained and recorded what would be the fair rental of the estate, and what might fairly be demanded from the ryot, and the Settlement Regulation of 1822 recognised these rents as determined by the settlement and required the civil courts to respect them. Under this arrangement the practice went on smoothly enough, and some persons would say that all parties were contented and happy. Twenty years ago Act X of 1859 was passed. Nothing was further, he believed, from the intention of the framers of that Act than to interfere in any way with the right of the executive Government to

determine the share of the produce or land revenue demand which it should take. But while passing clauses for the protection of the ryot, the Legislature laid down that the ryot's rent should not be enhanced except by a certain procedure and upon certain specific grounds. Hon'ble members were aware that Act X of 1859 was answerable for a good many things which were never contemplated. An officer the other day, while conducting a survey in Durbhunga, was having a conversation with the ryots, who were giving him the history of what had passed of late years. They said that everything was going on quietly. But about ten years ago disturbances took place in which a manager's bungalow was burnt down, and so on, and this they described as "Act das uthá." Now the officer to whom they were speaking knew that Act X had been in force many years before the occurrences to which they referred, so he asked them what they meant by "Act das uthá." His interlocutor explained that "Act das bulwa hai"—"Act X means a general row." Another bystander, however, condescendingly corrected the first speaker by explaining: "Act das yih hai kih hum malguzári nahin denge!" Act X is this, that "I won't pay my rent!"

The ryots generally had now discovered that this phase of Act X applied to settlements of land revenue. They had gradually found out, or it had been found out for them, that the effect of these protective clauses of Act X of 1859 was to deprive of all validity the rents which had been recorded as demandable by settlement officers. Having found out that, they proceeded to act on the principle, and refused to pay where a higher rent than they had previously paid was recorded by the settlement officer as being fairly demandable from them. Then this followed; the zemindars whose estates were under re-settlement said—"You ask us to pay a higher amount of revenue because the value of the land and the produce has increased. But how are we to pay increased revenue unless we can get the ryots to pay us in proportion, and they won't do that unless we go through the dilatory process of the courts. We get no help from the settlement officer's finding, and without it it takes us two or three years to establish enhanced rents, if we succeed even then: you cannot expect us, under these circumstances, to enter into engagements to pay higher revenue for our estates." Then they threw the management of their estates on the hands of the revenue officers, standing aloof themselves, and receiving only a stipulated cash payment as proprietary allowance. Here was a deadlock approaching. Recognizing that, this Council last year passed Act III of 1878, the object of which was to throw, as it were, the dead weight on the side of the settlement officer's finding as to the proper rents to be paid. No finality was given to their finding, but it was to be presumed that the rent fixed by a settlement officer was fair and equitable, the onus being thrown on the ryot, who was bound to institute a suit to contest the finding within two months if at all. Mr. Dampier was now speaking entirely in the public interests, and not in those of any one class of the public. This Act III of 1878 was passed entirely in the interests of the public revenues, which were being endangered. Since the Act was passed some very large settlements had been brought to a conclusion, the rates had been confirmed, and it only remained to get the

ryots to agree to the enhanced rents. The general ground for enhancement was the very great general rise in the value of produce. When the settlement officer began to take advantage of the provisions of Act III of 1878, and to write out notices of enhancement, he found that according to the conditions imposed upon him by the Act he was pulled up short. He found that in order to draw up such notices of enhancement as would be admitted as valid by the civil courts, he must do what was practically impossible, namely, analyse the holding and rent of each individual ryot and its origin, and in his enhancement notice say—"The rent you are now paying was fixed in such a year; at that time it represented such a proportion of the value of the produce of the land (say one-fourth); now the value of the produce has since then doubled, and I call upon you to pay double your present rent, which will bear the same proportion to the present value of produce as your rent when last fixed bore to the then prevailing value of produce." Well, where was the settlement officer to find these facts? The zemindar, at that particular moment, was against him. Until the ryot's rents were established, the demand of Government revenue could not fairly be raised upon him. And it was obviously the ryot's interest not to give any information at all. And even if the zemindar were inclined to act on the best faith, he was not in a position to furnish the required information. The zemindars generally did not keep their papers so systematically as to enable the Collector to pick out from them the required specific information regarding each ryot's holding. Here was another deadlock. Every expedient had been tried to get over it without legislation, but they had failed, and nothing remained but for MR. DAMPIER, as representing the Revenue Department, to ask the permission of the Council to introduce this measure.

Amongst other things, Act III of 1878 limited the grounds upon which settlement officers may record enhanced rents to those specified in Act X of 1859. The provisions of Act III of 1878 having thus been found absolutely unworkable, and the public revenues seriously endangered thereby, a remedy had been devised in the present proposal. The settlement officer had in his hands in most cases the record of the last settlement, and found recorded in them what proportion of the value of produce then prevailing was taken as the basis of the rates on which the rents were calculated. It was therefore proposed, while adhering to the general idea of a rise in rents proportionate to the rise in value of produce (which had sprung out of the Rent Law of 1859), that the proportion which would be taken as the basis of comparison should be the general proportion between the rates of rent as fixed at the preceding settlement and the value of produce then prevailing, instead of applying the comparison separately to the rent of each individual ryot. Under the proposed Bill it would not be necessary to specify that each individual ryot's rent was fixed in such a year, at such an amount, which then bore such a proportion to the value of the produce.

The Bill also provided that it should not be necessary to specify the previous area of the holding in an enhancement notice. It might be said,

The Hon'ble Mr. Dampier.

if you have the settlement papers why not specify the area as it was at the last settlement, and compare it with that now held? In fact holdings as they were now were in 9 out of 10 cases actually unidentifiable with those which existed about 30 or 40 years ago at the time of the last settlement. The holdings of the last settlement had been divided by inheritance, added to by purchase, diminished by sale, and changed in every possible way; so that a holding as it was now held by one individual man, although he might be the son of a father who was recorded as the ryot at the last settlement, was not the same as the holding at that time. Nevertheless the last changes might have taken place more than 12 years ago, and so the ryot might have acquired an occupancy right in what he now actually held. These were the reasons on which the Government was obliged to ask the Council to pass a measure which would allow a settlement officer to enhance rents on calculations founded on the general rates adopted at the previous settlement, and not in proportion to the particular rent which was fixed for any particular holding at the last settlement.

With these remarks he begged to move for leave to bring in a Bill to amend Bengal Act III of 1878 (an Act to define and limit the powers of settlement officers with respect to enhancement of rent).

The Hon'ble Kristodas Pal said he generally concurred with the remarks of the hon'ble mover of the Bill. He fully recognised the difficulty which under the existing law existed in the way of the settlement of rents, whether as regards Government estates or private estates. But there were one or two points in connection with the Bill which he wished to bring to the notice of the Council. He observed that under section 1 of the Bill the rules of enhancement, as laid down in Act X of 1859, would be practically abrogated. He fully admitted that those rules as interpreted by the High Court had now become to all intents and purposes unworkable, and that consequently the enhancement of rent under the guidance of those rules had come to a deadlock. But if the Council thought it necessary to abrogate those rules, he was of opinion that it ought to be done openly, and not in a covert way; for while this Bill retained section 2 of Act III of 1878, it introduced a proviso which practically superseded that section. He for one would fully and absolutely recognise the principle laid down in the Bill without reference to the specific ground contained in section 17 of Act X of 1859. Then, with regard to the principle on which rent was to be enhanced or settled under the Bill, he observed that the mover had adopted the principle of proportion of the gross value of produce. He for one considered that a fair and equitable principle. He thought it was a step in advance towards the solution of the great Rent problem, but he would take the liberty to suggest that in no case should the increase of rent be more than double the existing rent. Proceeding upon the principle laid down in the section, the rent might in any case be trebled or quadrupled. But he did not think it would be fair to enhance rent to more than double the current rent. It might be said, as indeed it was pointed out by the hon'ble mover in his opening remarks, that a settlement having been made 30 or 40 years ago, the ryots had been gradually encroaching on other lands not belonging to them, and thus possessed more lands than

they were lawfully entitled to, and consequently the old rent bore no fair relation to their liability. In that case Baboo Kristodas Pal would suggest for the consideration of the hon'ble mover the propriety of defining a share of the produce as the measure of the rent payable by the ryot, whether it be one-third or one-fourth, just as the hon'ble council might consider fair and equitable. Once this share was declared, the gross value of the produce might be calculated and made the basis for the settlement of rent. But whatever course might be followed, Baboo Kristodas Pal thought that in no case should the enhanced rent be more than double the existing rent, or more than one-third or one-fourth of the gross value of produce. And, lastly, once the rent was settled, the ryot should be allowed rest or immunity from the pains and troubles of an enhancement suit for a reasonable period. The settlement, in his opinion, should be allowed currency for ten years, and the ryot protected from molestation or interference for enhancement of his rent during that period.

The motion was put and agreed to.

The HON'BLE MR. DAMPIER applied to the President to suspend the rules for the conduct of business to enable him to move that the Bill be read in Council.

HIS HONOR THE PRESIDENT observed that generally he objected to suspend the rules of the Council, but he thought that in this case it was desirable that they should try and get the Bill forward one stage. There appeared to be no objection to the principle of the Bill, and objections to the detail he thought would better be considered in Committee. He therefore suspended the rules.

The HON'BLE MR. DAMPIER then moved that the Bill be read in Council, and in doing so he would proceed to remark on the form of the Bill. It had been suggested that the Act which this Bill proposed to amend was such a short one, and the amendments in proportion were so long, that it would be better to repeal the Act at once and re-enact it in an amended form. He quite agreed to that himself, but he deliberately did not frame the Bill in that shape because, in the form in which he had drawn it, the points of change were more prominently brought to notice. But he did think, if the Select Committee agreed, that it would be better to pass this measure as an entirely new Act.

With reference to the remarks of the hon'ble member opposite (Baboo Kristodas Pal), who said that the Bill abrogated section 2 of Act III of 1878, Mr. Dampier would not say "abrogated," because it left those grounds of enhancement in full force which were contained in Act X of 1859. But the Bill undisguisedly laid down a new ground of enhancement, which would be held to be sufficient for the purposes of settlement officers. It made a fourth ground as it were of enhancement, and in doing so the Government had tried to follow the spirit of the Rent Law and of the decisions passed on it. The idea of the proportion between the rent and the produce of the land to be retained in enhancing rents was altogether the child of Act X of 1859. It was not proposed to let the settlement officer do as he liked. Then the hon'ble gentleman said that under the Bill a ryot might be called upon to pay four times the rent he was previously paying. As a matter of principle, MR. DAMPIER thought that this objection could not be supported.

The Hon'ble Mr. Dampier.

If the ryot now had the use of land of which the value was fourfold the value of the land which he held at the last settlement, why should he not pay four times the former amount for the use of it? But in reducing principles to action allowance must be made for friction. Say the rents of ryots on an estate were fixed 30 or 40 years ago. Perhaps they pressed a little hardly when they were fixed; but gradually, as the value of produce rose, the pressure had been getting lighter and lighter. With that the ryot's habits of life, his wants, and his social status, had been gradually rising; and it would be a hardship suddenly to reduce him to his old status. Any ordinary settlement officer would give full weight to that and many similar considerations before raising the ryots' rents to the full extent of the rise in the value of produce: whether a Civil Court Judge might properly exercise any such mitigating discretion when called on to apply the legal rule of proportion against the ryot was more doubtful.

Then as to paying one-fourth or one-third of the value of the produce, and enacting that the amount of rent should in no case exceed that proportion. Speaking for himself individually, as he had no opportunity of learning what His Honor's views on this point might be, he should have no objection to some such specified limit being introduced in the Bill.

As to the next suggestion, that the ryot's rent once fixed should not be liable to enhancement until after the expiration of ten years, or some other fixed period, every one to whom he had ever spoken on the subject agreed to the expediency of adopting such a rule.

The Hon'ble Syed Ameer Ali said that it seemed to him that this Bill changed the entire spirit of Act III of 1878, which was passed only a year ago. He was therefore inclined to agree with the hon'ble member on his left (Baboo Kristodas Pal) in thinking that it would be better to rescind the Act altogether and pass the Bill as a substantive measure. With reference to the Bill itself, he was not prepared to offer any objection to its principles, but he was of opinion that section 3 would certainly press heavily upon the ryots. The ryots, as a general rule, were poor and ignorant, and not always in a position to express their views and feelings respecting any legislation affecting them as a body, and therefore it was especially necessary that any objection from their point of view should be submitted to the Council. Now, section 3 of this Bill declared that the enhancement of the rent should be in proportion to the increase in the value of produce, as it seemed to him, not with reference to any particular holding, but generally in and about the adjacent lands. If he remembered rightly the provisions of section 17 of Act X of 1859 and section 18 of the Bengal Act VIII of 1869, the enhancement could be claimed if the value of the produce, or the productive powers of the land held by the ryots, had increased. It might so happen that in a particular case the land with reference to which enhancement was attempted to be made might have deteriorated since the time of the last settlement, whilst the productive capacity of the adjacent lands might have increased. In that case the settlement officer, proceeding on the basis of a general increase in the value of produce, would enhance the rates of the particular holding in question, and the unfortunate ryot would be thereby materially prejudiced. He thought, therefore, that some restrictions

ought to be imposed on the discretion of the settlement officers regarding the standard which should be taken for the enhancement of rent with reference to the value of produce. The increase in the value of produce should be with reference to the particular holding in respect of which enhancement was claimed. He hoped this principle might be borne in mind in Select Committee.

The Hon'ble Mohini Mohun Roy said it appeared to him that under the existing law, as contained in Bengal Act VIII of 1869, it was not necessary, in cases of enhancement on the ground that the value of the produce had increased, to show that the value of the produce of a particular holding had increased. It was quite sufficient to prove that the value of a particular article of produce had increased in the locality. So far as the principle was concerned, he did not think the provisions introduced in this Bill in amendment of section 5 of Act III of 1878 did in effect alter the law of enhancement as contained in Act X of 1859 or Act VIII (B.C.) of 1869. There was another reason for which he thought he ought to lend his support to the Bill. Before the passing of Act X of 1859 there was a provision in the Regulation VII of 1822 that the proceedings of the settlement officer should be final and binding on all parties, and some time after Act X of 1859 was passed that was considered to be the law. It was not till 1869 or 1870 that the question was first raised that Act X of 1859 having introduced a provision that in all cases of enhancement of rent it was necessary to serve notice of enhancement before enhancement could be demanded, the rates fixed by settlement officers in the settlement of Government estates could not be final. And he thought that in this matter the question of the enhancement of rents of ryots in Government estates should be placed on a more practical basis than what had been laid down in Act X of 1859 and Act VIII (B.C.) of 1869.

The Hon'ble Mr. Dampier said in reply that the hon'ble member opposite (Syed Ameer Ali) considered that the value of produce should be compared with the value of the produce of the actual holding. That was really objecting to the whole principle of the Bill. The principal reason for the introduction of this Bill was that it could not be found what the holding was at the time of the last settlement, that there was no means of tracing the land of each ryot, but if it were possible to compare holding with holding, that comparison would of course be taken into consideration.

The motion was then agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Mr. Mackenzie, the Hon'ble Mr. O'Kinealy, the Hon'ble Mr. Syed Ameer Ali, the Hon'ble Kristodas Pal, the Hon'ble Mohini Mohan Roy, and the Mover, with instructions to report in three weeks.

DRAINAGE AND IMPROVEMENT OF LANDS.

The Hon'ble Mr. Dampier moved for leave to bring in a Bill to facilitate drainage in Bengal on the model of Bengal Act V of 1871, "the Hooghly and Burdwan Drainage Act." That Act was well known to officials and landholders in this neighbourhood, and the object of the Bill was to take advantage of the experience which they had had in the working of the Act in Hooghly and Burdwan, and to have a measure applicable to any part of Bengal for the

carrying out of any drainage scheme which might be considered necessary by the Lieutenant-Governor, to be worked out by the engineering officers of the Government, with the consent of not less than one-half of the proprietors whose lands would be reclaimed and improved, and who would eventually have to pay the cost of the work.

The motion was put and agreed to.

MANAGEMENT OF INLAND STEAM VESSELS.

The HON'BLE MR. INGLIS begged to move for leave to bring in a Bill to provide for the proper management of certain inland steam vessels. Although the Bill stood in his name, he ought to explain that Government accepted the responsibility of introducing the measure, and that he took charge of it at the request of His Honor the President. He understood that the need for such a Bill partly arose out of the intention to make pilotage on the Hooghly compulsory. Until lately, the public were under the impression that all vessels navigating the Hooghly were bound to employ a pilot. The High Court, however, in a recent case, decided that this view was incorrect. It was the intention of Government to remove all doubt on the subject by extending the provisions of section 38 of the Indian Ports Act, 1875, making pilotage compulsory on the river Hooghly below Calcutta, and therefore a special enactment, such as he now moved for leave to bring in, was needed to meet the case of inland steamers. It was proposed that commanders of such steamers, if duly certificated, should be held to be pilots for the purposes of section 38 of the Indian Ports Act in respect of their own vessels. The alternative to this would be for Government to provide for such vessels a special establishment of pilots at Channel Creek, where inland steamers enter and leave the Hooghly. Apart, however, from the question of expense, which was a sufficient obstacle in itself to the adoption of such a plan, inland steamers being by law subject to the Carriers Act, their commanders and owners, with due regard to the interests of the public, should be relieved of responsibility in the same way that commanders of sea-gonig vessels were when a pilot was on board. Fears had been expressed that the examination of commanders of inland steamers, with a view to the granting of certificates, might be so strict as to prevent some of them, who had much practical experience, from passing. This fear he believed to be quite groundless, but in any case he was assured that length of service and character would be taken into account in granting certificates, quite as much as a man's ability to answer any questions that might be put. The Bill would provide for the trial and punishment of certificated commanders when guilty of incompetency or misconduct; and in view of the fact that no law short of the Penal Code could at present reach them, this seemed to be necessary. It was proposed to put commanders of inland steamers on the same footing in this respect as commanders of sea-going steamers; so that both would be subject to the jurisdiction of the Marine Court empowered under the Indian Merchant Shipping Act, 1875, to enquire into charges of incompetency or misconduct. This would not, he believed, be objected to by the parties affected.

He should think, indeed, that owners of inland steamers, as well as commanders, would in the end derive benefit from the measure. The Council would doubtless be glad to receive any suggestions regarding the Bill from those who had a special knowledge of the subject. Government, he was sure, wished to frame a measure that would work satisfactorily, and he had little doubt that if leave were given to bring in this Bill the Council would be able so to frame it.

The motion was put and agreed to.

COURT OF WARDS.

The HON'BLE MR. BUCKLAND said he had not had time to give notice of the motion he was about to make, the object of which was to move that the Bill to amend the law relating to the Court of Wards, as revised by the Select Committee, be referred back to the Committee for further consideration and report. The fact was that the amended Bill was published in last week's Gazette with the view of giving information as quickly as possible to the officers in the mofussil of the proposed changes in the law. At that time his hon'ble colleague Mr. Dampier was on duty out of Calcutta, and since his return to Calcutta he had expressed a wish to give the Committee the benefit of his practical experience in the administration of the Wards' Department in the further consideration and amendment of the Bill, and the Select Committee were equally desirous of having his valuable experience. MR. BUCKLAND therefore moved that the Bill be referred back to the Select Committee, and that the Hon'ble Mr. Dampier's name be added to the Committee.

The motion was agreed to.

The Council was adjourned to Saturday, the 15th instant.

By subsequent order of the President the Council was further adjourned to Saturday, the 29th May 1879.

Saturday, 29*th March* 1879.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble J. D. BELL, Acting *Advocate-General*,
The Hon'ble C T. BUCKLAND,
The Hon'ble H. L. DAMPIER,
The Hon'ble A. MACKENZIE,
The Hon'ble J. O'KINEALY,
The Hon'ble AMEER ALI,
The Hon'ble SYED AMEER HOSSEIN,
The Hon'ble RAJAH PAMATHA NATH ROY, BAHADOOR,
The Hon'ble BABOO MOHINI MOHUN ROY,
The Hon'ble A. B. INGLIS,
and
The Hon'ble J. B. KNIGHT, C.I.E.

DRAINAGE AND IMPROVEMENT OF LANDS.

THE HON'BLE MR. DAMPIER moved that the Bill to provide for the drainage and improvement of lands, which had been for some time in the hands of hon'ble members, be read in Council. As he had said, in asking leave to introduce this Bill, it was the result of experience. There was a local Act (V of 1871) for carrying out a certain scheme for the drainage and improvement of some lands in the Hughli and Burdwan districts, and certain amendments had been engrafted upon that enactment which experience had shown to be necessary. The outlines of the Bill were that, whenever it appeared expedient to the Lieutenant-Governor to carry out any such scheme of drainage and improvement, he might have a scheme submitted and plans drawn up by Government officers, and appoint a certain number of Commissioners, the majority of whom should be persons interested in the lands affected, and lay the scheme before them. When they had considered it, and had made modifications in it with the approval of the Lieutenant-Governor, they should publish the scheme, and call upon the persons whose lands were affected by it either to express their consent to the scheme, or to bring forward any objections they might have to it. It was further provided that, as the scheme was to be carried out eventually at the expense of the proprietors of the lands, the consent of not less than one-half of the persons concerned should be necessary to the execution of the work. Act V of 1871, it seemed to Mr. DAMPIER, was rather roughly drafted, and considerable improvements would have to be made in the Bill by the Select Committee. For instance, the expression "the proprietors of one-half the lands to be benefited" might be read in different ways, and the expression ought to be more correctly defined. Then, the proprietors having agreed to the scheme, and the Commissioners and the Lieutenant-Governor having approved of it, the Lieutenant-Governor might sanction the scheme and the estimates, and order them to be

carried out. Provision was also made for any alterations or modifications of the scheme while it was being carried out, or for the carrying out of only a part of the scheme, and so on. And the scheme was to be carried out by means of advances made by the Government, which were to be eventually recovered from the proprietors of the land which would be benefited by the works. Under Act V of 1871 a proprietor was defined to be a person having a permanent interest in the land at a fixed rate of rent. In this respect there was a very material alteration made in the Bill. Great difficulty was experienced in apportioning the cost amongst the proprietors, for every small mokurraree ryot and petty lakhirajdar was a proprietor, and so he would also be under this new Bill, and therefore in framing this Bill recourse was had to the principle of the Road Cess Act. It was provided that of several proprietors it should rest with the Commissioners to say which one of them should be the victim from whom they would recover the money in the first instance, leaving him to recover the proportionate amounts from the subordinate tenure-holders in the ordinary manner.

When the completion of the work was certified, *i.e.* not till the proprietors began to reap the benefits of the scheme, would the Commissioners proceed to apportion the amount payable by the proprietors to the Government and issue a report.

There was another change made in the Bill regarding the procedure to be followed. Under the Act of 1871 the sum expended in carrying out the scheme was recoverable rateably according to the area of the land held. Under this Bill a system of classification of lands was to be introduced; the Commissioners were to classify the lands of each village according to the extent of the improvement effected by the drainage works and the benefit to be derived by the proprietor—whether 50 per cent., 20 per cent., or 10 per cent., and so on, and the sums recoverable were to be in proportion to the benefit which the land had derived from the improvement according to the classification of the Commissioners themselves. There were provisions for appeals against the orders of the Commissioners apportioning the cost, and eventually the collection of the money was left in the hands of the Collector, as well as the looking after the maintenance of the works.

From the moment that the works were executed, they were to fall under the general rules for keeping up public embankments, and the Collector was to do that through the agency of the Government Engineer. But to assist the Collector in looking after the maintenance and in the administration of the property, a Committee of working proprietors was to be appointed.

Mr. Dampier had omitted to mention that, though every proprietor would have to pay the amount upon which he was assessed, he need not pay it at once, but would have the option of executing an agreement with the Collector to pay it in ten annual instalments, with interest at the rate of 5 per cent. per annum.

Precisely the same powers were given to proprietors to recover from each of the subordinate tenure-holders, and it was also provided that they should not recover in one year more than one-tenth of the sum due, and these subordinate

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proprietors, down to the lowest mokurrareedar, were protected from enhancement of rent in consequence of the improvements. There would remain those who were not proprietors, *i.e.* the occupants of the land, who would bear no share of the expense and would therefore be liable to enhancement.

In section 45 the old difficulty arose, viz. who was to collect from the holders of lands held free from the payment of rent or revenue? It was extremely difficult for the zemindar or proprietor to get hold of these petty lakhirajdars and recover the due proportion of cost from them. But there was no remedy at present. The Board of Revenue had recently submitted some proposals to Government which had been received with favour, and the object of which was to get some sort of registration of these petty lakhirajdars for all purposes. If that proposal was brought into force, it would apply to this and other Acts, in accordance with which taxation might be levied from these lakhirajdars direct.

In the last section of the Bill it was provided that the proceedings of the Commissioners and of the Collector should be subject to the general control of the Commissioner of the Division and of the Board of Revenue.

The motion was agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Mr. Buckland, the Hon'ble Mr. O'Kinealy, the Hon'ble Syed Ameer Hossein, the Hon'ble Baboo Mohini Mohun Roy, the Hon'ble Baboo Kristodas Pal, and the mover, with instructions to report in six months.

INLAND STEAM VESSELS.

The Hon'ble Mr. Inglis moved that the Bill to provide for the proper management of certain inland steam vessels be read in Council. At the last meeting he had explained the objects of this Bill, and he did not think that at this stage it was necessary for him to add anything to that statement.

The motion was agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble the Acting Advocate-General, the Hon'ble Mr. Buckland, the Hon'ble Mr. Mackenzie, and the mover, with instructions to report in a fortnight.

POWERS OF SETTLEMENT OFFICERS.

The Hon'ble Mr. Dampier moved that the report of the Select Committee on the Bill to define and limit the powers of Settlement Officers be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. The Committee, he said, had followed up the hints given at the last stage of the Bill and had gone direct to their object: there could be no accusation now of things being done by a side-wind. They had begun by saying that nothing in Act X of 1859, or Bengal Act VIII of 1869 (the Rent Laws), should apply to settlement proceedings, except as provided in the Bill, and he ventured to say that, in so doing, they had reproduced the real intention (or what would have been the real intention if the thing had been considered) of the framers of those two Rent Laws. They had reverted to a certain extent to the agency which had been used for determining rents at settlements from the time of Todar Mull to that of Edward Currie.

But the Legislature had now become more precise, and was not willing to leave everything to the discretion of the Settlement Officer; and therefore the Bill provided that the discretion of the Settlement Officer should be guided in the first place by that of the superior Revenue authorities, and next, in cases of enhancement of rents, that he should keep within certain specified conditions. It would be seen from section 5 that the rents, before they were recorded as demandable and became binding, were to be sanctioned by such authority as the Lieutenant-Governor might appoint. In any estate of importance the Settlement Officer would have to satisfy the Collector and the Commissioner, and in more important settlements the Board of Revenue, that the rates he proposed to adopt were proper.

Section 6 was an important section. It laid down the grounds upon which enhancement of rent might be made, and it could only be made on one or other of those grounds, and not otherwise. The first of those grounds was "that the higher rent so recorded is calculated on rates which are not above the prevailing rates payable by the same class of ryots for land of a similar description and with similar advantages in the surrounding neighbourhood." That was absolutely the wording of the Rent Law, with the exception of the word "surrounding," which was substituted for "adjacent," because the Select Committee considered it to be more precise. The second ground of enhancement was the same as the Rent Law—"that the enhancement is not greater than is justified by the increase which has taken place in the productive powers of the land, otherwise than by the agency or at the expense of the ryot, since the rent of the ryot was last fixed." The fourth ground was also substantially the same as one of those in the existing Rent Law. Thus three out of the four grounds of enhancement were almost identical with the Rent Law.

The ground of enhancement, printed as clause 3 of section 6, embodied the origin of this Bill; it was this clause which would meet the difficulty which led to the Bill being introduced. The difficulty was this, that it was impossible to apply the ground of enhancement relating to increase of the value of produce, because the courts had put such a construction on that ground of enhancement as made it necessary (in order to enforce the enhancement which was equitably due with reference to the rise in the value of produce) to show when the tenure was created, and what was then the proportion between the value of produce and the rent fixed. Tenures changed, so that it was found impossible to identify a tenure existing now with a tenure which existed years ago, and it was impossible to say when a particular ryot's tenure originated, so as to compare the rent of that year with the value of produce which then existed. But it was represented that forty years ago, in many settlements, a laborious enquiry had been made into the prices which then prevailed for the purpose of fixing the rents. And the principle which had been adopted in this Bill, where a previous settlement of that sort had been carried out, was to assume that the proportion between the rates then fixed as payable by occupancy ryots and the prices of produce which then prevailed was a fair and equitable proportion, and that the rents at this settlement might be increased in proportion to the rise in the value of produce, but no more. This principle was

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explained to the Council when the Bill was read, and the Select Committee threw it into the shape of clause 3, as it now stood.

It would be convenient here to speak of the amendment MR. DAMPIER proposed to move to-day, dividing this clause 3 into two parts. On looking carefully into the clause which had been drafted by the Select Committee, he found that, though the power of enhancing in proportion to the rise of produce since the last settlement had been given in those cases in which a previous settlement of the estate had been made, the section contained no provision whatever for enhancing the rates of rent on the ground of a rise in the value of the produce in estates which had not been the subject of previous settlement.

He proposed, therefore, to divide the Select Committee's clause 3 into two clauses. The first, which stood printed in his amendment paper as clause 3, was a reproduction of the ground of enhancement in the Rent Law authorizing the enhancement of rent on a comparison of the present rates of rent and value of produce with the rates of rent and the value of produce existing at the time of the creation of the tenure. That would to some extent meet the case of lands which had not come under settlement before, such, for instance, as alluvial lands which had been forming for some time. If any ryot on such lands had established a right of occupancy, all these clauses would be binding in his favour, and as no settlement had taken place before, the last settlement could not be taken as the basis of any enhancement. In such cases the Settlement Officer would have no other alternative than to take the state of things which existed when the ryot's tenure was created for comparison, if he could discover it. That was nothing more than what was contained in the present law.

There was another very large class of cases which would have slipped through clause 3 as adopted by the Select Committee—those cases in which a settlement had been made, but no record kept of the prices which prevailed at the time and in which such prices could not now be ascertained. In such cases, also, the Settlement Officer, if he thought the rent liable to enhancement, must necessarily trust to being able to find out in what year the tenure was created and how prices then stood.

Clause 4 of MR. DAMPIER's amendment reproduced what was clause 3 of the Select Committee's Bill.

Section 7 of the Bill made it legal to give effect to any enhancement by progressive increments. It was all very well to ask why, if the value of his land had increased tenfold, the tenant should not be required to pay ten times as much rent; but, as a fact, such a sudden increase in the demand for rent must be felt as a great hardship. The tenant's profits had gradually increased since the last settlement, and with them his wants, and his status had gradually improved, so that, where a very considerable increase of rent was justifiable, it would be felt as less of a hardship if the full amount were gradually obtained by means of progressive increments.

Section 8, as framed by the Select Committee, provided that the rent recorded as demandable from an under-tenant should in no case be higher than an amount which was ten per cent. below the aggregate of the rents recorded as demandable in any year from the subordinate under-tenants and ryots whose holdings fell

within his under-tenure. On looking carefully into the section, MR. DAMPIER found that, if a zemindar created an under-tenure, the assets of which—*i e.* the sum payable by the cultivating ryots—were Rs. 100, the zemindar would, under the operation of this rule, be restricted to Rs. 90 only. But if, there being nothing expressly stated in the contract between him and the under-tenant barring the creation of under-tenures, the under-tenant of the first degree created an under-tenure of the second degree, the latter would collect Rs. 100 from the ryots; he could only, under the limitation of this rule, be made to pay Rs. 90 to the tenure-holder of the first degree, and the tenure-holder of the first degree could only be required to pay Rs. 81 to the zemindar, deducting 10 per cent. for himself. Thus the effect would be that, because the under-tenant chose to sub-infeudate, the zemindar's profits would be reduced, and the Government revenue would suffer, for the revenue must of course be fixed with reference to what the zemindar would receive. It was to prevent such losses that MR. DAMPIER had prepared his amendment to section 8, viz. that—

"The rent payable by an under-tenant shall be recorded as demandable at such rate as to the Settlement Officer may seem fair and equitable, and shall be determined with reference to the character of the tenure and to the aggregate of the rents which may have been recorded as payable to the under-tenant by all the under-tenants and ryots included in his tenure."

The amendment did not say that the allowance left must be 10 per cent. to each of a series of under-tenants, but that a rent must be fixed which should be fair and equitable under the circumstances of each case.

Section 10 provided that every under-tenant and ryot should be liable to pay the rent recorded as demandable from him under this Act, unless it should be proved, in any suit instituted by such under-tenant or ryot to contest his liability to pay the same, that such rent had not been assessed in accordance with the provisions of this Act.

Under Act III of 1878 three months were allowed to a ryot to bring his suit; but under section 424 of the Code of Civil Procedure the suit would be against a public officer, and notice of two months was required before institution of such suits. If only three months were allowed to the ryot within which to bring a suit, it would practically cut his time down to one month for deciding whether he would contest or not. The section as now framed allowed two months for the notice, and two months thereafter for the institution of the suit. The time was thus extended by one month.

The amendment, which was marked "section 10A," was suggested to MR. DAMPIER by his hon'ble friend to his right (Mr. O'Kinealy). It provided that, if the Civil Court interfered with the rent recorded by the Settlement Officer, the court must in its decree indicate what would be a fair rent to be paid under the principles of this Act. Section 11, as to the time when enhancement of rent should take place, was new. The custom of the country was very well known. Hitherto, if a settlement had not been concluded till a few months after the close of the year with which the previous settlement expired, the ryots, as a general rule, did not question their liability to pay rents under the new settlement from the beginning of the year. Section 11 legalized this practice;

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if the enhancement notices could not be served before the end of the year, but were served within the first six months of the next year, the settlement would take effect from the beginning of that year.

Section 12 was also one which MR. DAMPIER thought fair in every way. When once the rent had been recorded and settled under these proceedings, there would be no more measurements and harassment for the next ten years at least, or for any shorter period to which the proceedings might extend.

The motion was agreed to.

The HON'BLE MR. DAMPIER moved that at the end of clause 2 of the preamble the words "except the scheduled districts as defined in the Scheduled Districts Act, 1874," be omitted. This amendment was the result of some considerable study of a very difficult subject—the Scheduled Districts Act. It was now considered that the Bill should extend to the scheduled districts as well as the rest of Bengal, otherwise the rent law would continue to apply to settlements in any of the scheduled districts in which that law happened to be in force before the passing of this Bill.

The motion was agreed to.

The HON'BLE MR. DAMPIER moved that in the definition of "Settlement Officer" in section 3 the words "of the" after the word "Collector" in line 3 be omitted, and the words "or any officer in charge of the revenue jurisdiction of a" be substituted for them. The definition would then embrace a Deputy Commissioner of a non-regulation district.

The motion was agreed to, and, on the motion of the HON'BLE AMEER ALI, similar words were inserted after "Collector" in line 8.

The HON'BLE MR. DAMPIER moved that the words "in section 51 of Regulation VIII of 1793 or" in lines 1 and 2 of section 4 be omitted. Section 51 of Regulation VIII of 1793 provided under what conditions only the rents of intermediate talookdars as mentioned therein could be enhanced. The section had been referred to in connection with talooks in temporarily-settled estates by the Board of Revenue, he was sorry to say, and, he believed, even higher authority; but on looking into the Regulation, it appeared as clear as possible that section 51 of Regulation VIII of 1793 only applied to estates which were then brought under the decennial settlement, and which subsequently became permanent. In a preceding section of the Regulation talooks were defined. There were several kinds of talooks; and they were not such as might afterwards be created, or might afterwards fulfil the specified conditions, but most distinctly such as had acquired a certain status at the time of that settlement.

The settlement of estates which were not settled permanently was conducted under Regulation VII of 1822, and not under Regulation VIII of 1793. In extending the provisions of Regulation VII of 1822, Regulation IX of 1825 (section 2) expressly drew the distinction by extending it then to all lands "not included within the limits of estates for which a permanent settlement has been concluded in the manner prescribed by Regulation VIII of 1793." In MR. DAMPIER'S judgment it came to this, that any talook in any estate which was not the subject of settlement at the decennial settlement could claim no protection under section 51 of Regulation VIII of 1793; and as

the Council were now dealing with the bulk of estates which had never been permanently settled, there was no use in saying that nothing contained in that provision should apply to them. He therefore proposed to strike out the reference to that regulation.

The HON'BLE MR. MACKENZIE said he did not think that practically it would affect the question one way or the other whether the words in the section were retained or omitted.

The HON'BLE MR. DAMPIER remarked that he believed the opinion of the same authority could be produced on the other side. He need scarcely say that he was not alluding to any deliberate decisions of the High Court on the point, but merely to decisions from which inferences might be drawn one way or the other; he was not aware that the point had ever been expressly considered and decided by the Court.

The HON'BLE BABOO MOHINI MOHUN ROY observed that there could be no doubt that section 51 of Regulation VIII of 1793 applied only to talooks existing at the time of the permanent settlement: that has been held by the Privy Council. But it was not necessary that the estate in which the talook should be situated should be made the subject of permanent settlement; all that was necessary was that the particular talook should be existing at the time of the permanent settlement. Many estates which had been permanently settled had, by the process of sale for arrears of revenue, come into the hands of the Government, and might be the subject of settlement under Regulation VII of 1822. The omission of the reference to section 51 of Regulation VIII of 1793 would debar the holders of talooks in those estates to appeal to the protection given to them by that enactment.

The HON'BLE MR. DAMPIER said that he had not before been aware that the Privy Council had ruled that if a talook had existed at the time of the permanent settlement, even although the estate in which it was situated was not permanently settled, the talook was entitled to the protection of section 51 of Regulation VIII of 1793. But he accepted that decision. If in an estate which was under resettlement now either because it had never been permanently settled, or because, having once been permanently settled, it had fallen into arrears and been purchased by the Government,—if in such an estate a talook were found which had existed from the time of the permanent settlement, it was not desired to deprive it of the benefit of section 51 of Regulation VIII of 1793. That provision laid down certain conditions under which the rents of those talooks might be enhanced, and it was not desired to go beyond those conditions; therefore there was no reason or necessity for retaining in this Bill the reference which declared the section to be inapplicable to estates under settlement: whatever it covered the Government was quite willing to accept and recognize.

The motion was then carried.

The HON'BLE MR. DAMPIER moved the introduction of the following clause after clause 2 of section 6:—

"(iii) That the value of the produce of the land has been increased otherwise than by the agency or at the expense of the ryot since the rent of the ryot was last fixed; and that

such higher rent does not bear a higher proportion to the rent of such ryot as last fixed than the prevailing price of produce bears to the price of similar produce which prevailed about the time when such rent was last fixed."

The HON'BLE AMEER ALI said in line 6 the words used were—"than the prevailing price of produce bears to the price of similar produce which prevailed about the time when such rent was last fixed." He submitted that the words "prevailing price" were very vague, and would give rise to a great deal of controversy and contention. He need not mention that the prevailing price at a particular date might be an abnormal price, whether it was high or low, owing to various accidental circumstances. He would therefore suggest by way of amendment that the following words be substituted instead—"than the normal price of produce at the time of the present settlement bears to the normal price of similar produce which prevailed at or about the time when such rent was last fixed." The object of his amendment was to exclude from consideration exceptional prices.

The HON'BLE MR. DAMPIER observed that this point had been very much discussed in Select Committee. The proposed alteration of wording appeared to him to convey the same meaning; but if the hon'ble member meant to tie up the Settlement Officer so as to make it impossible for him to do anything unreasonable, the amendment would not succeed in doing that. No form of words could be devised which would altogether preclude the exercise of discretion unreasonably. For instance, even with the form of words proposed by the hon'ble member, one Settlement Officer might take as the normal price that which prevailed in the particular month in which he conducted the settlement (widely different in January and July), while another, more reasonably, would take an average of the prices prevailing throughout the year.

HIS HONOR THE PRESIDENT thought the amendment a sound one, and that it met the object the hon'ble member had in view. It left it open to be shown before the Settlement Officer that the price was abnormal, and if that could be shown, then, if the proposed words were inserted, he was bound to take that circumstance into consideration and fix the rent accordingly.

The proposed clause 2, with the HON'BLE AMEER ALI'S amendment, was then agreed to.

On the motion of the HON'BLE MR. DAMPIER the following clause was substituted for clause 3 of section 6:—

"(iv) That the value of the produce of the land has been increased otherwise than by the agency or at the expense of the ryot since the last previous settlement of the lands was made; and that such higher rent does not bear a higher proportion to that which would have been the rent of lands of a similar description and the same area, according to the rates of such previous settlement, than the prevailing price of produce bears to the price of similar produce which prevailed about the time of such previous settlement, as recorded in the papers of such settlement, or as otherwise ascertained and certified by the Settlement Officer."

The HON'BLE MR. DAMPIER moved that the following section be substituted for section 8:—

"The rent payable by an under-tenant shall be recorded as demandable at such rate as to the Settlement Officer may seem fair and equitable, and shall be determined with reference

to the character of the tenure and to the aggregate of the rents which may have been recorded as payable to the under-tenant by all the under-tenants and ryots included in his tenure."

The HON'BLE AMEER ALI said he objected to this amendment on principle. It was not put before the Select Committee which had the consideration of the Bill. It was a new provision, and he thought he was entitled to object to it on principle. He was of opinion that the provision would work enormous mischief, by allowing unlimited power to the Settlement Officer to impose any charge he liked on the under-tenants. He did not think it advisable that under-tenants should be left to the unlimited sense of equity of the Settlement Officer: a limit should certainly be imposed to the exercise of that discretion. If the sense of the Council was in favour of the section proposed in substitution of section 8 of the Bill, he submitted that a proviso should be added embodying the principle which was contained in the section which the Select Committee settled, viz. that in no case should such rent be higher than an amount which was ten per cent. below the aggregate of the rents which was recorded as demandable in any year from the subordinate under-tenants. The hon'ble member appeared to have had in view the protection of the interests of the zemindar, as the zemindar might have created an under-tenure without providing against sub-infeudation. But if such a contingency arose, MR. AMEER ALI submitted it was the fault of the zemindar in not taking care to protect himself from sub-infeudation without his knowledge and consent. He thought the enhancing power of the Settlement Officer with reference to under-tenants should not be placed on a different footing from that which prevailed with reference to occupancy ryots; under-tenants should have the same privileges and rights as occupancy ryots. But even if it was not intended to proceed in regard to under-tenures on the same basis as in the case of the enhancement of rents of occupancy ryots, it seemed to him that a limit should be imposed as laid down in the section, which was considered and settled by the Select Committee and incorporated in section 8 of the Bill.

The HON'BLE MR. DAMPIER observed that the hon'ble member was perhaps not aware that he was springing a mine against the public revenue. He was putting in the hands of the zemindar and men of straw under the name of under-tenants the means of bringing to a minimum the amount which the Government could demand as revenue. The hon'ble member said that MR. DAMPIER was speaking on behalf of zemindars; but he had in fact guarded himself by saying that the Bill was in the interests of the Government and the public, and not of any classes or persons. If the clause stood as it had been settled by the Select Committee, not only the zemindar might be defrauded, but the public revenue might suffer very seriously. He would cite the instance of the Sunderbuns. According to the system of settlement which had been allowed to prevail there, four or five grades of intermediate tenure-holders were often found on the estates; and the system was to allow each grade to retain about two annas out of every rupee which he received from the under-tenant below him. If the cultivator paid a rupee a beegha, the under-tenant of the lowest grade paid fourteen annas, the one above him only

twelve annas, and so on. The following result had ensued. As soon as A and B had taken a settlement from the Government, they proceeded to create a talook in the name of A (one of the settlement-holders) and Z (a man of straw whose name was joined with A's to save appearances). Then the talookdars A and Z created an ousut talook in the name of B (the other proprietor) and X, another man of straw, and so on through several more degrees of sub-infeudation; so that by the time the revenue of the estate reached the Government, the rupee which the cultivating ryot had paid had dwindled to four annas or so.

The HON'BLE BABOO MOHINI MOHUN ROY said he was against the amendment before the Council. He found that "under-tenant" in the Bill meant any holder of a heritable and transferable intermediate tenure between the Government and the ryot other than a zemindar, or, in other words, a middleman; and the practice had always been in the civil courts in all cases to give middlemen a certain percentage for collection charges and profits—from 20 to 25 per cent.—from the gross rental payable by the cultivating ryots. If it was found that a person claiming to hold as a middleman had no right, his claim should be thrown out; but if his right was established, there appeared to be no reason why he should not have an allowance for collection charges and something for his profit. Section 8 of the Bill provided that the rent demandable from an under-tenant should in no case be higher than an amount which was ten per cent. below the aggregate of the rents recorded as demandable from the subordinate under-tenants and ryots; this gives little enough; whereas, according to the practice of the civil courts, from 20 to 25 per cent. is allowed. On these grounds BABOO MOHINI MOHUN ROY would support the section as it stood, or if the amendment of the hon'ble member in charge of the Bill was preferred, then he would vote for the addition proposed by the hon'ble member on his right (Mr. Ameer Ali).

MR. MACKENZIE said it appeared to him that they had been unexpectedly launched into the middle of a very difficult subject,—a subject which he thought it would not be at all easy to settle in connection with this Bill. Section 8 was based upon a section of an old Regulation which had been repealed, and which provided that, where there was only one middleman, he should receive an allowance of ten per cent. upon the ryots' rents. But, as the hon'ble member in charge of the Bill had pointed out, it was impossible to make that principle applicable to a descending scale of talookdars. At the same time, there was a great deal to be said against leaving the Settlement Officer too wide a discretion in settling talookdars' rents. The simplest way out of the difficulty for the present would perhaps be to strike out section 8 from the Bill, leaving things exactly as they were now, until the whole question of middlemen's rents could be taken up in connection with a revised rent law. In settling rents the Settlement Officer only looked to the assets of the estate, which were the rents paid by the ryots; he then allowed 30 per cent. for malikana and collection charges; and the question of how this allowance was to be distributed between the zemindar and the under-tenants was practically a matter for settlement between the zemindar and his under-tenants; it did not affect the demand of the Government

jumma. It might be necessary, where under-tenants were created, that the Settlement Officer should recognise such under-tenants and put them upon a proper footing, and that was a matter to which the Board of Revenue had given much consideration, and in practice a fair and equitable settlement was usually arrived at. But to fix the mode of enhancing the rents of talookdars was a distinct and important question connected with the rent law. MR. MACKENZIE would therefore move that section 8 be omitted from the Bill.

The HON'BLE MR. DAMPIER quite agreed with his hon'ble friend that section 8 of the Bill was an attempt to deal in some sort of way with a very difficult question. He did not think that the Council would be justified, in the course of the present Bill, to impose restrictions in favour of under-tenants which might limit the demand of Government revenue in a way in which it was not limited by the existing law.

The HON'BLE BABOO MOHINI MOHUN ROY observed that although that provision was not a part of the statute law, it had been recognised by the Privy Council. If the Council omitted the 8th section of the Bill, they would leave the under-tenant without any allowance for collection charges or for profits; he would have to pay the expenses of collection out of his own pocket, and make over the entire collections to the Government officer. BABOO MOHINI MOHUN ROY thought it neither just nor necessary to leave under-tenants in that position: to treat a person as an under-tenant, and to deny him the rights of an under-tenant, was not consistent. If he failed in establishing the fact that he was really the holder of a heritable and transferable tenure, he might be turned out; but if he established his claim, he was entitled to all the rights attaching to his position. BABOO MOHINI MOHUN ROY approved of section 8 as it stood in the Bill.

The HON'BLE AMEER ALI remarked that, if section 8 was struck out of the Bill, the Bill would have to be re-cast altogether.

The HON'BLE MR. MACKENZIE observed that by striking out section 8 things would be left exactly as they now were. It had nowhere been settled, either by Council-made or Judge-made law, that an under-tenant should get an allowance of ten per cent; he would have to go to the courts to assert his fair share of the profits.

The motion to omit section 8 from the Bill being put, the Council divided:—

Ayes 7.	*Noes* 4.
The Hon'ble Mr. Knight.	The Hon'ble Baboo Mohini Mohun Roy.
" " Inglis.	" Rajah Pamatha Nath Roy.
" " O'Kinealy.	" Syed Ameer Hossein.
" " Mackenzie.	" Ameer Ali.
" " Dampier.	
" " Buckland.	
" the Acting Advocate-General.	

So the motion was carried.

The HON'BLE MR. DAMPIER moved the introduction of the following section after section 10. If the Civil Court set aside the rent recorded by the Settlement Officer, it should be bound to specify what rent the under-tenant was to pay, and the amount so specified should be recorded as the rent demandable from such under-tenant:—

"10A. If the rent of any under-tenant or ryot recorded as demandable under this Act is set aside or modified in any suit instituted under the provisions of section 10, the Court passing the order by which such rent is so set aside or modified shall distinctly specify the rent to be payable for the tenure or land in respect of which the rent is so set aside or modified, whether at the rates at which rent was paid before the settlement proceedings, or at such revised rates as the Court may determine with reference to the provisions of section 5, section 6, section 7, and section 8 of this Act; and the Court shall fix the date from which any such revised rent shall take effect, and the rent specified by the Court shall be deemed to be the rent recorded as demandable by the Settlement Officer under the provisions of this Act."

The HON'BLE MR. MACKENZIE thought that the only change that would be necessary would be the omission of the definition of under-tenant. It would perhaps be sufficient to adjourn the debate.

After some conversation the further consideration of the Bill was adjourned.

COURT OF WARDS.

The HON'BLE MR. BUCKLAND moved that the further report of the Select Committee on the Bill to amend the law relating to the Court of Wards be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. In doing so he begged to say a few words on what might be called the historical position of the present Bill and of the law regarding the Court of Wards.

The present Bill might be roughly described as a revised edition of the Bill which was passed in this Council in 1877, and was subsequently vetoed by the Governor-General in Council on almost technical grounds, but chiefly because on some minor points it was held to be in conflict with the Code of Civil Procedure.

In the session of 1878 the Hon'ble Mr. Reynolds introduced an amended Bill to the Council, in which he omitted those provisions to which the Government of India had taken exception; and some further amendments, many of them only verbal, were proposed in conformity with some suggestions made by Mr. Phillips, the Secretary to the Government of India in the Legislative Department, in the letter which conveyed the orders regarding the veto of the Bill.

The Bill was in this position when it was placed in Mr. Buckland's charge. It was then published and circulated, in order to invite the criticism of the public at large and of the Government officers concerned in its administration. In the course of the year a large number of important remarks and suggestions were received from different quarters, and they had been communicated in due course to the Council.

Whilst the Bill was in this position it occurred to him to compare it with the law in force in the North-Western Provinces.

Our Bill contained above 100 sections. The law of the North-Western Provinces was contained almost entirely in one chapter of the Land Revenue Law, Act XIX of 1873, and is expressed in 14 brief and terse sections. With the permission of the Lieutenant-Governor of Bengal an attempt was made to bring the dimensions of our Bill within a moderate compass, and our able Secretary, Mr. Clarke, succeeded in reducing the length of our Bill from above 100 sections to about 60 sections. In Select Committee both Bills were carefully considered. First, the Committee considered Mr. Reynolds' Bill amended to some extent according to the intelligent criticisms which had been received regarding it; but finding this Bill very unmanageable, the Committee next considered the abbreviated draft prepared, as had been stated, by Mr. Clarke; and the Bill as now presented to the Council was the outcome of the labour of the Select Committee after many long and deep discussions on this more manageable draft.

The main principle which had been followed in this attempt to shorten the law had been to confine the work of legislation to that which must be expressed as law, and to leave, as much as possible, all that was merely directory and connected with the subordinate administration of the law to be provided for by rules. He would mention only one point in illustration of the application of this principle. The old law contained several sections on the subject of accounts and the audit of these accounts. It would be easily understood that this was hardly a matter for detailed legislation. It might be desirable to state in the law that accounts were to be kept, but it was absurd to try and prescribe what accounts were to be kept. The accounts suitable to a large estate were not needed for a small estate. And, as a matter of fact, the accounts under the old law had not always been kept very consistently or audited systematically. It would doubtless be found much more convenient and efficient to leave to the Court of Wards, which was now to be the Board of Revenue, the power to make rules on the subject of accounts, as was done, he had reason to believe, with considerable success in the North-Western Provinces.

In the reports of the Select Committee there would be found a detailed explanation of the alterations and amendments which had been made in the Bill as now presented to the Council. For many of the most important amendments, especially those contained in the second report, the Committee had to thank Mr. Dampier, whose practical experience in the Land Revenue Department of the Board in the administration of wards' estates had been of great value and importance. They had also to thank another member of the Council, the Hon'ble Syud Ameer Hossein, who was not on the Select Committee, for a paper in which he contributed his suggestions on the Bill.

MR. BUCKLAND begged to observe that in the first report of the Select Committee there was a statement which was not strictly correct as to the period at which the Board of Revenue ceased to be the Court of Wards. It was true that the letter of the law was not changed until the enactment of Act IV of 1870; but in practice the Commissioners of divisions were invested, by the

The Hon'ble Mr. Buckland.

orders of 10th August 1842, with the powers of the Board of Revenue for the administration of the Court of Wards

The motion was put and agreed to.

On the motion of the HON'BLE MR. BUCKLAND the following section was introduced at the end of Part I, and similar words in the 2nd clause of section 6 were omitted:—

"Nothing contained in this Act shall affect any of the provisions of Act XXXIV of 1858, or the jurisdiction, as respects infants, of any High Court of Judicature."

On the motion of the HON'BLE MR. DAMPIER a verbal amendment was made in section 24.

The HON'BLE MR. DAMPIER moved that the words "from the property which would be liable for the debts of the deceased proprietor" in section 29, clause 5, lines 6 and 7, be omitted, and the following substituted for them:—

"and any person who is in possession of any property which would be liable for the debts of the deceased proprietor shall be deemed liable to pay such demand:

"Provided that the proceedings for the recovery of such demand shall take effect against such property as aforesaid, and no other property;

"Provided also that no person shall be liable to pay any such demand exceeding the value of such property in his possession."

As the section stood it provided that the expenses incurred by a Collector in making enquiries, when he thought it probable that the estate of a deceased proprietor was liable to be brought under the Court of Wards, should be recoverable as a demand, under Bengal Act VII of 1868, from the property which would be liable for the debts of the deceased proprietor. But a certificate under that Act was not issued against property but against a person, and it occurred to him that the Select Committee had overlooked the fact that they had not named the person who would be liable. He had therefore drafted these clauses to supply the omission, providing at the same time that the liability should only extend to the extent of the property of the deceased.

The HON'BLE MR. O'KINEALY observed that the amendment would not meet the case where such person had sold the property and obtained the proceeds. He believed there were certain provisions in the old Civil Procedure Code, regarding the following up of the property of a deceased proprietor, which had worked well, and which he thought would answer the purpose.

The HON'BLE MR. MACKENZIE remarked that the section seemed to him open to no objection as it stood. It left the Collector at liberty to follow up any property of a deceased person which was legally liable for his debts, and the certificate would be filed against any person found to be legally liable in connection with such property. The amendments suggested would not answer.

The HON'BLE THE ACTING ADVOCATE-GENERAL said the property might be in the hands of a person who was not entitled to it, or there might be no legal representative of the deceased. He preferred the section as it stood in the Bill, but he thought that the wording required more careful consideration.

The HON'BLE MOHINI MOHUN ROY said one objection occurred to him. Under Act VII of 1868 when a certificate was issued, it was made against a

person, and all his property became liable for the amount; but the amendment now proposed would scarcely be consistent with the provisions of Act VII of 1868.

The HON'BLE MR. DAMPIER observed that the Certificate Act provided that a certificate might issue for a demand against the person "who was liable to pay the same," and it bound all the property of such person. If hon'ble members who were accustomed to deal with legal matters would assure MR. DAMPIER that under the wording of that law read with this section of the Bill (which named no one as liable to pay) the Collector might issue a certificate against any particular individual, MR. DAMPIER would be content to let the section in the Bill stand as it was.

After some conversation the further consideration of section 29 was postponed.

On the motion of the HON'BLE MR. DAMPIER verbal amendments were made in sections 36 and 37.

On the motion of the HON'BLE MR. DAMPIER the words "or from any officer or servant employed under the Court" were inserted after the word "manager" in line 4 of section 42, so as to make sums due from those officers as well as from a manager or guardian, or the sureties of a manager or guardian, recoverable as a demand under Bengal Act VII of 1868.

On the motion of the HON'BLE MR. BUCKLAND sections 47, 48, 49, and 50 were transposed so as to stand after section 41. The object of the transposition was to place those sections in better order. Section 41 defined the special duties of a manager, and sections 47—50 referred to the general duties of a guardian, and the specific duties of a guardian, and other subjects connected with guardians. If they were placed after section 41, sections 42—46, which applied to both managers and guardians, would stand in clearer order.

On the motion of the HON'BLE MR. DAMPIER a verbal amendment was made in sections 51 and 52.

The HON'BLE THE ACTING ADVOCATE-GENERAL said, before they proceeded to consider the amendment in section 58, he would ask the Council to look at the whole of Part VIII of the Bill (sections 57—60), in order to see if it did not vest in the hands of the Collector of the district powers which it seemed to him ought not to be placed in the hands of an officer of that sort. He was not aware that such great powers of fine and imprisonment were vested in any authority without going through the forms and procedure of a trial. No doubt Courts of Record had the power of committing for contempt of court, but they could only do so after recording a formal proceeding. A close examination of these sections of the Bill would show that very serious powers were conferred under them. He would suggest the postponement of their consideration, so that hon'ble members might have an opportunity of judging of the importance of the subject. He specially referred to the section (60) under which a person was liable to a fine of Rs. 1,000 and imprisonment for six months. Under the definition of "Court" in section 3, it meant the Court of Wards, or, when the Court of Wards had delegated its powers, it meant a Commissioner or Collector, or any other person. The whole of the provisions of

this Part, he respectfully submitted, required very careful consideration, and possibly republication, before the Council could be brought to introduce them in the Bill.

The HON'BLE MR. BUCKLAND said the particular clause which had been referred to existed in Act IV of 1870. Under section 43 of that Act a manager might be imprisoned by the Collector, and under section 44 he might be fined. The provisions in Part VIII of this Bill took their origin from the existing law.

HIS HONOR THE PRESIDENT enquired whether there was any particular reason why the Court of Wards should not be the prosecutor in these cases and the offender be taken before a judicial officer for trial—the Magistrate of the district, who occupied a different position from the Collector as regards the trial of cases.

The HON'BLE MR. MACKENZIE pointed out that under Regulation law the higher revenue authorities often had power to punish disobedience of their lawful orders, and those powers were still given even in modern legislation. Thus under the Partition Act a Collector or Deputy Collector was vested with the power of imposing a daily fine of Rs. 50, and not exceeding Rs. 500 in the aggregate, and the Commissioner and Board of Revenue had more extensive powers. It had never been contended that for the imposition of such fines the Collector should go to a judicial officer. The Collector and the Magistrate being the same person, it appeared more seemly that the power should be vested in him than that he should go before his own Deputy Magistrate as a prosecutor.

The HON'BLE AMEER ALI perfectly agreed with the hon'ble and learned Acting Advocate-General with regard to the enormous discretion vested by these sections in revenue officers without any judicial proceeding. That certain officers had had these special powers did not affect the question, and therefore the objection which had been taken was, he thought, a valuable one, and deserving the serious consideration of the Council. He certainly himself objected to the provisions as they were, without some provision being made for the recording of a regular judicial proceeding. The suggestion which had fallen from His Honor the President would, he thought, meet the requirements of the case; but if it was not adopted, he would wish to add the words "in a judicial proceeding," so that it might come on revision before higher officers.

The HON'BLE MR. DAMPIER remarked that this discussion led up to his amendments. These sections were framed by the Select Committee before he joined the Council, and they had not been adopted on any suggestion from the Revenue Department. He certainly thought there should be some summary powers for enforcing orders; but he was free to admit that when he read section 60, and saw the tremendous power given to the Court of Wards acting as a judge in its own case, he was startled, and remembering that the Court of Wards was empowered generally to delegate any of its powers to the subordinate revenue officers, he thought it would not be proper to allow the delegation of the powers of inflicting this punishment to any officer below a Commissioner; he had therefore prepared the amendments on the notice paper.

HIS HONOR THE PRESIDENT observed that no doubt the Collector always had the power of imposing fines, and had it still; but notwithstanding that fact, he thought the power conferred by section 60 went very much beyond any

power vested in the revenue officers hitherto. He saw no reason why the offence of removing a ward from his residence without the leave of the Court of Wards should not be declared to be an offence punishable like other offences before the Criminal Courts of the country. There seemed to His Honor to be nothing in the nature of the offence which should remove it from the jurisdiction of the ordinary tribunals, and require its summary punishment by the revenue officers.

The Hon'ble the Advocate-General suggested the substitution in section 60 of the words "on conviction before a Magistrate" for "by order of the Court." He did not, however, think, on consideration, that he could object to sections 57 and 58.

The Hon'ble Mr. Buckland had no objection to the proposed amendment.

The Hon'ble Ameer Ali suggested the addition of the words "in a judicial proceeding" in sections 57 and 58. If a contempt was committed before any Court, before inflicting any punishment on the offender the Court was required to hold a judicial proceeding. But here no procedure seemed necessary, and therefore he most strongly submitted that the words "in a judicial proceeding" be inserted in both these sections.

His Honor the President enquired whether there would be any objection, although orders under sections 57—59 were of an executive nature, to their being drawn up in writing, and the grounds upon which punishment was awarded given, so that there might be an opportunity for appealing to the higher authorities. He did not see anything connected with these particular proceedings which would make it impossible to frame a proceeding in such a manner as to provide an appeal to higher authority if anything went wrong.

The Hon'ble Mr. Buckland referred to section 67 of the Bill, by which orders passed under the Act were subject to the supervision and control of the Court.

The Hon'ble Mr. Mackenzie observed that when the proper time came he would move the introduction of a section after section 63, which he thought would meet the objections which had been raised by requiring a formal record to be made in the case of orders passed under section 57 or 58 with the reasons or grounds thereof.

The Hon'ble Mr. Dampier and the Hon'ble Ameer Ali then respectively withdrew their amendments.

The Hon'ble Baboo Mohiny Mohun Roy wished to observe, before the Council passed from section 60, that the mere removing of a ward from his residence should not be treated as so serious an offence as to involve a fine of Rs. 1,000 and imprisonment, which might be rigorous, for six months. He thought the intent with which the removal was effected should be defined.

The Hon'ble Mr. Mackenzie explained that the section originated from a proposal of the hon'ble member opposite (Rajah Pramatha Natha Roy), who wished to provide for the punishment of a guardian who removed a ward without the leave of the Court. It then occurred to the Select Committee that if it was so serious an offence in the guardian of the ward, who might be assumed to have some authority over the ward, it should be considered a more serious offence in any other person.

The HON'BLE RAJAH PRAMATHA NATHA ROY remarked that he had proposed the provision referred to under the belief that a guardian who removed a female ward could not be punished for abduction. It was not his intention that the simple removal of a ward, it might be on a short visit to relatives, should be made criminally punishable.

The HON'BLE MR. BUCKLAND moved that section 60 of the Bill should be omitted. This motion was carried unanimously.

Verbal and formal amendments were then, on the motion of the HON'BLE MR. DAMPIER, made in sections 61 and 62.

On the motion of the HON'BLE MR. MACKENZIE the following section was introduced after section 63:—

"63A. When any penalty is imposed by any order under section 57 or 58, the Collector or Court passing such order shall make a formal record of the same, with the reasons or grounds thereof."

The further consideration of the Bill was postponed.

The Council was adjourned to Saturday, 5th April.

Saturday, the 5th April 1879.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble J. D. BELL, *Officiating Advocate-General*,
The Hon'ble C. T. BUCKLAND,
The Hon'ble H. L. DAMPIER,
The Hon'ble A. MACKENZIE,
The Hon'ble J. O'KINEALY,
The Hon'ble AMEER ALI,
The Hon'ble MOULVI AMEER HOSSEIN,
The Hon'ble BABOO MOHINI MOHUN ROY,
and
The Hon'ble A. B. INGLIS.

POWERS OF SETTLEMENT OFFICERS.

The HON'BLE MR. DAMPIER moved that the Bill to define and limit the powers of Settlement Officers be further considered in order to the settlement of its clauses.

The motion was agreed to.

The HON'BLE MR. DAMPIER said the first amendment he had to propose was the substitution of the following definition of "Settlement Officer" for that which stood in the Bill, the object being merely to carry out what was agreed to at the last meeting of the Council:—

"Settlement Officer" means the Collector or any officer in charge of the revenue jurisdiction of a district, and includes any Assistant Commissioner, Deputy Collector, or Sub-Deputy Collector whom the Collector or other officer as aforesaid may authorize to

conduct the enquiries and proceedings connected with any settlement of land revenue, and any officer who may be appointed by the Lieutenant-Governor to make any such settlement."

The motion was agreed to.

The HON'BLE MR. DAMPIER said in the amendment upon section 4 it had been decided to retain the reference to section 51 of Regulation VIII of 1793 in deference to the sense of the Council as expressed at the last meeting, although he believed that doing so would make no difference whatever. But in the reference to the Rent Laws, Act X of 1859, and Bengal Act VIII of 1869, an important alteration had been made. The section as it stood in the Bill provided that nothing in those Acts should affect settlement proceedings; but, as a matter of fact, a great deal in those Acts must affect settlement proceedings, everything in fact except the sections relating to the enhancement of rents; and, therefore, instead of saying that nothing in those Acts should affect settlement proceedings under Regulation VII of 1822, &c., the following section which he proposed to substitute for section 4 of the Bill specified the enhancement sections of those two Acts:—

"Nothing contained in section 51 of Regulation VIII of 1793, or in sections 13, 14, and 17 of Act X of 1859, or in sections 14, 15, and 18 of Bengal Act VIII of 1869, shall affect any settlement proceedings under Regulation VII of 1822, or under any other law for the time being in force for the regulation of settlements of land revenue."

The motion was agreed to.

On the motion of the HON'BLE MR. DAMPIER, verbal amendments were made in sections 5 and 6.

The HON'BLE AMEER ALI said it would be remembered that when the Bill was originally introduced he had taken certain objections to section 6 as it then stood on the ground that it would press heavily on ryots. He had urged that in many cases it might happen that the original holding of a ryot had deteriorated whilst the productive powers of the surrounding lands had increased; and consequently, if the productive powers of the surrounding lands were taken as the test of the production of the particular holding in question, it would prove grossly inequitable to the ryot. The hon'ble member in charge of the Bill, however, had explained in committee the reasons which induced him to insert the clause, and MR. AMEER ALI could not help admitting that the reasons urged appeared to be very cogent. It was stated that frequently the original holdings could not be identified; in many cases additions were made to them by purchase or diminutions effected by sale; and it therefore seemed necessary that a clause of this kind should be enacted. But as it was only intended to cover that class of cases where the original holding could not be identified, MR. AMEER ALI was of opinion that it was extremely desirable words to that effect should be inserted in the clause in question to prevent the capricious exercise of an already unlimited discretion possessed by the Settlement Officers. He did not see the necessity of leaving it to the Settlement Officer to proceed upon the basis of any of the five grounds of enhancement mentioned in the section in accordance with the dictates of his own sense of equity and good conscience. If the original holding could not be identified, the enhancement was of course to be made pursuant to the

rules laid down in clause 4; but if the holding could be identified, it seemed to him hard to throw on the ryot needlessly, and without any sufficient reason, the burden of answering the complicated questions involved in that clause. No one, MR. AMEER ALI believed, had the interest of the people more at heart than the hon'ble member in charge of the Bill; but he felt it his duty to draw the attention of the hon'ble member and the Council to the difficulties which had suggested themselves to his mind. He might remark that the Settlement Officers would not be guided in their proceedings by the debates which took place in Council but by the actual text of the law; it was therefore necessary that the law should be so worded as to make it impossible for them either to misapply or misconstrue. He would accordingly move that the words "when the original holding of the ryot cannot be identified" be inserted in clause 4, line 4, after the word "and," in order to indicate distinctly the class of cases to which it was intended the clause should apply.

The HON'BLE MR. DAMPIER said this was the one amendment suggested which he had not been able to accept. The proposal came to this, that the Settlement Officer should never be allowed to make use of the ground of enhancement contained in clause 4 unless he found it impossible to identify the holding; in other cases, he would have to proceed as in clause 3 was directed. He admitted that it was the difficulty of identifying holdings as required in clause 3 which led to the introduction of this Bill; but as clause 4 had been worded, it seemed to him that it should not be limited only to those cases in which the holding could not be identified. One of the objections to so doing would be this, that in every case in which the ryot wished to contest the assessment of rent under clause 4, he would say that if the Settlement Officer had taken proper trouble he might have identified the holding and the rates at which it was originally settled. The burden of such an objection it would be impossible for the Settlement Officer to bear. It had been found necessary in recent settlement proceedings to pick out certain ryots against whom to bring suits, and the Collector had succeeded in identifying the holdings and the dates of creation of some 10 or 12 ryots, but it was after weeks, if not months, of laborious search among papers, which would be quite impossible for each of a numerous body of ryots. If the amendment now proposed was passed, then every ryot in an estate might, in contesting the assessment under clause 4, say—"If the Collector had only taken sufficient pains he could have identified my holding as originally created, and therefore he has acted illegally in enhancing my rent under clause 4 instead of clause 3." The insertion of the words proposed would be sufficient to upset settlements under clause 4.

There was another very radical defect which was apt to occur under clause 3, of which MR. DAMPIER would give an instance. At the settlement, 40 years ago, certain rates were adopted. Say that the zemindar at the time of the settlement had given a holding to A at Rs. 10 jumma; the zemindar then slept over his rights; he did not bustle about to keep enhancing rents every time there was a rise in the value of produce, but he allowed every new ryot to come in at the rates fixed at the last settlement, which were well known

and household words. Amongst the new ryots who came in, one B might get a holding precisely identical with that which A had got 20 years before. By that time the rise in produce had very much increased; say it had doubled. The result was that the old ryot A held his land at Rs. 10, which represented one-half of the value of produce at the time his holding was created; whereas B, who did not come on the estate till 20 years later, and had exactly a similar holding, also held at Rs. 10; but the value of produce had risen to Rs. 40 by the year in which B's rent was fixed: B's rent therefore represented only one-fourth of the value of produce. Thus on resettlement or enhancement the rent of the older ryot might be enhanced to half the value of the produce as it was now estimated, while the rent of B, who came in 20 years later, could only be enhanced to one-fourth the present price of produce In other words, the younger ryot would be much more favourably situated than the older, which was contrary to all the principles of the rent laws. For these reasons Mr. Dampier was opposed to the amendment.

The Hon'ble Ameer Ali's amendment was put and negatived.

The Hon'ble Mr. Dampier said at the last meeting the Council did not agree as to the principle upon which the rents of under-tenants were to be adjusted, and eventually his amendment to section 8 was rejected, and the original section struck out of the Bill altogether. But it seemed to him, and his hon'ble friends who helped him in drawing up the amendments on the notice paper since the last meeting of the Council, that it would make the Bill much more complete to introduce some sort of rules on the subject. The Council had been prepared to accept the clause which was originally drawn up by the Select Committee, to the effect that every talookdar should be allowed 10 per cent. at least. He had then pointed out that a zemindar might fraudulently create half a dozen under-tenures, each of which would be entitled to 10 per cent., and there would certainly be something very much less left than the revenue which the Government ordinarily took. On reconsideration, however, he was willing to assent to the 10 per cent. allowance, as that had been allowed by previous laws. It seemed best to divide under-tenures into two classes—those whose tenures were binding upon the Government, and those which were not so binding. Even if a series of six binding under-tenures were created, and they were each allowed 10 per cent., the Government would have some 50 per cent. less out of the gross assets. And therefore, where the under-tenure was one which was binding on the Government, he would allow each under-tenant in the series at least 10 per cent. profit upon the rent which he received.

In passing on to clause (*c*) the distinction between under-tenures which were binding and those which were not binding upon the Government should be carefully borne in mind. This clause related to tenures which were actually in existence, but under circumstances under which they were not binding upon the Government, *i.e.* where the person who created the tenure had no authority to create it as against the Government. In such cases it would be admitted that there was no reason whatever why the Government should lose any of its revenue. His hon'ble friend opposite, Baboo Mohini

Mohun Roy, said that the proper way was to ignore such under-tenures, but unfortunately Regulation VII of 1822 required that the Settlement Officer should record what he found actually existing. If he found these tenures existing, and that they were good against the zemindar, and only not binding against the Government, the rents payable by the holders must be recorded. The Settlement Officer would take care, under clause (*a*), to record that they were not binding against the Government. Then how was he to settle what rent was payable by each under-tenant in the series? To MR. DAMPIER personally it seemed that no rule could be laid down: it could only be said that all the circumstances should be considered by the Settlement Officer, and that he should record such rent to be demandable as appeared best to his judgment with reference to the circumstances of the case. The objection which existed against the Settlement Officer deciding the rents appeared to MR. DAMPIER to be particularly weak as applied to cases of this class. The Government was put aside; the under-tenures were not binding against the Government, and therefore the Settlement Officer could no longer be said to be a Judge in his own cause; he was merely arbitrating amongst other parties with which the Government was not concerned. There was another safeguard which he thought might be introduced. If hon'ble members would not trust the Settlement Officer, to make everything complete MR. DAMPIER had inserted the last four lines of the proviso. If the under-tenant contested by suit the rents recorded, the Court might proceed to settle the rents of under-tenures which were not binding upon the Government, as if no mention was made of them in the Act, but with one exception, viz. that the suit must be instituted within four months. It seemed to him that this would afford ample protection in such cases against any want of discretion or of experience in the Settlement Officer. The hon'ble gentlemen who had assisted MR. DAMPIER since the last meeting of Council proposed to introduce what would be found in the first half of the proviso:—

"Provided that in adjusting the rents of different grades of under-tenants, where there are more than one, the Settlement Officer shall, as far as may be, assign to each and to the zemindar the same relative proportion of the difference between the Government demand of revenue and the gross rent payable by the ryots as they severally enjoyed before the settlement proceedings commenced."

MR. DAMPIER had drawn out a table from which he thought it would be seen that this provision would not work. Yesterday he had before him a case from Backergunge to which he had attempted to apply this provision, and he found that it would not work. His hon'ble friends had, he believed, prepared an amendment to meet his objections; but if that amendment could not be adopted, he would wish to leave out the first part of the proviso above quoted. His motion now would be to insert the following section after section 6:—

"6A. The rent recorded as demandable from an under-tenant shall be determined in accordance with the following rules:—

"(*a*)—Whenever the Settlement Officer shall find any person holding as an under-tenant, he shall first ascertain and record whether the under-tenure so held is binding as against the Government.

"(*b*)—If the Settlement Officer finds the under-tenure to be so binding, the rent recorded as demandable from such under-tenant shall in no case be higher than an amount which

shall be 10 per cent. below the aggregate of the rents recorded as payable to him from the subordinate under-tenants and ryots whose holdings fall within his tenure.

"(c)—If the Settlement Officer shall find that the under-tenure is not binding as against the Government, he shall first determine the proportionate amount of the demand of land revenue to be assessed upon the lands included in the under-tenure in accordance with any orders of Government for the time being in force regulating the demand of land revenue, and shall record the rent payable by such under-tenant at such a sum (not being less than such proportionate amount of land revenue or more than the aggregate of the rents recorded as payable to him from the subordinate under-tenants and ryots whose holdings fall within his tenure) as may seem fair and equitable with reference to the character and circumstances of the tenure.

"But nothing in this clause shall be held to limit the discretion of the Civil Court in determining in any suit under section 10A the rent of an under-tenant of the class described in this clause."

The Hon'ble Mr. Mackenzie observed that it would, perhaps, simplify matters if hon'ble members would speak to the principle before any particular form of amendment was proposed. He himself was quite contented with the amended section as drafted by the hon'ble member in charge of the Bill, and he thought it unobjectionable that, in cases where the Government was not interested, the Settlement Officer should be left to fix the rents of under-tenants in the first instance, leaving discontented parties to go to the Civil Court. If, however, that view should not commend itself to the Council, he was prepared to move a further amendment, which would, he thought, be open to none of the objections anticipated by the hon'ble member in charge of the Bill.

Baboo Mohini Mohun Roy said it appeared to him that the matter which it was proposed to lay before the Council for its consideration was much too important to be brought in simply as an amendment to the Bill: the provisions which were intended to be introduced were certainly of a character which required that they should be carefully considered by the Select Committee, and the Council should not be asked hurriedly to adopt them. He would ask, with reference to the first clause of the section, that the Settlement Officer should first ascertain and record whether the under-tenure was binding against the Government, what validity would be given to the Settlement Officer's finding on that point? [Mr. Dampier—none]. Then he did not see any practical use in adjusting the rents of each under-tenant. There were various other matters of importance to be considered, and he therefore thought the question should be referred back to the Select Committee for reconsideration.

The Hon'ble Mr. Dampier said all the proceedings of Settlement Officers ever since 1859 had been without finality of any sort, with one exception, viz. the fixation of Government revenue, and now he was asked in respect of this one item "what was the use of recording the rents to be paid by under-tenants if it was to have no finality?" Unless the Council were to repeal Regulation VII of 1822, they could not prevent the Settlement Officer, when recording his proceedings, from recording the rent payable, and whether the tenure was binding on the Government: that was an obligation put upon him by law. If the Council would not let the Bill pass with a clause requiring the Settlement Officer to record whether an under-tenure was binding on the

Government, he would record everything to the best of his judgment all the same under Regulation VII of 1822, but then the under-tenant would not be obliged to bring his suit within four months; he might do so five years after, and thus difficulties might arise.

His Honor the President observed that he must say the whole course of this Bill had been very irregular and unusual. The whole of the work of the Select Committee had been as a matter of fact thrown upon the Council. His Honor had repeatedly been compelled to point out the great inconvenience resulting from Select Committees sending up their measures so hastily and so incompletely prepared that the whole work of amending the Bills section by section and word by word had to be gone through at the regular meetings of the Council. It was impossible that the work could be properly and efficiently done at the public sittings, and they were in consequence apt to adopt hasty and crude amendments which had not been properly considered, and had to undo at one meeting what they had done at another. It was not only that time was wasted, but the work could not be properly done. The Select Committees should send up their Bills in such a condition that amendments and discussions such as they had had at the last two meetings should be wholly unnecessary, but as they now after much discussion had come to definite conclusions upon every point except one, he thought it would be a pity to accept the proposal to recommit the Bill to the Select Committee. He thought they might now come to a decision upon that one point without adopting that course, and therefore he proposed to put this amendment, and if the sense of the Council was against it, then he would put the amendment which he understood would be made to leave out clause (*c*) altogether.

The question was then put that clauses (*a*), (*b*), and (*c*) of section 6A, with the last clause of the proviso verbally amended, do stand as part of the Bill.

The motion was agreed to.

On the motion of the Hon'ble Mr. Dampier, the following was substituted for section 7:—

"7. When the rent demandable from any under-tenant or ryot is recorded at an amount below that to which the rent of such under-tenant or ryot might have been enhanced under this Act, it may be recorded that such under-tenant or ryot shall from time to time be liable to pay increased rent from such dates as may be fixed by the Settlement Officer, until the rent paid by him reaches the amount which the Settlement Officer may determine to be properly payable by him under this Act."

The Hon'ble Mr. Dampier moved the substitution of the following for section 9:—

"9. Whenever a higher rent has been recorded as demandable from any under-tenant or ryot than the rent previously paid by him, the Settlement Officer shall cause to be published a copy of the *jummabundi*, or extracts therefrom, specifying in respect of each such under-tenant or ryot the rent recorded as payable by him, and, in the case of a ryot, the clause or clauses of section 6 of this Act under which his rent is enhanced.

"Such publication may be lawfully made by affixing a copy of the *jummabundi*, or of such extracts therefrom as the Collector may think fit, at the mal cutcherry of the village to which the *jummabundi* relates, or at some other conspicuous place therein, and by proclamation by beat of drum in the said village to the effect that the said copy or extracts have been so affixed, and that the *jummabundi* can be inspected at the office of the Settlement Officer."

This section had been amended in deference to the opinion of his colleagues. It provided that instead of a notice with the *jummabundi* annexed, notice of enhancement should be given by publication of the *jummabundi* in the same way that the preceding sections provided that notice with the *jummabundi* annexed should be published. It was really only a question of form.

The motion was agreed to.

On the motion of the HON'BLE MR. DAMPIER, the following was substituted for the second clause of section 10:—

"No such suit shall be instituted otherwise than within four months after the publication of the *jummabundi*, or extracts as aforesaid, in the village in which the lands which are the subject of the suit or any part thereof are situated."

The HON'BLE MR. DAMPIER moved the introduction of the following after section 10:—

"10A. In all suits instituted to contest the rent recorded as demandable under this Act the Court shall, if it modifies or sets aside such rent, proceed to determine the rent payable by the plaintiff in accordance with this Act, and if any arrears of rent at the rates determined by the Court are found to be due, shall make a decree in favour of the defendant, with such costs as may seem proper."

It had been suggested by his hon'ble friend to the right (Mr. O'Kinealy). The object was merely to save a second suit for arrears after the rent had been fixed by the Court.

The motion was agreed to.

On the motion of the HON'BLE MR. DAMPIER verbal amendments were made in section 11. In moving them he said that he wished to say a word on behalf of the Select Committee. He did not wish to be captious, but what did occur was this. The Bill had very much developed, and it had been considered necessary, from circumstances, to go on with extreme haste. It was true the Select Committee had met only a certain number of times, but for his own part there had not passed a single day, he believed, since the Bill was read in Council, that he did not write a letter about it to one member of the Committee, or have a personal interview about it with another. If the time had not unavoidably been so limited, he ventured to say His Honor the President's remarks would not have been called for. No Bill within his experience in Council had received so much time and attention of hon'ble members, in comparison to the time during which it had been before Council.

HIS HONOR THE PRESIDENT said he would have been very happy to have extended the time within which the Select Committee was required to submit their report, not only to save trouble to the Council, but because, he must say, he did not consider this a satisfactory or convenient way of doing business.

The Bill having been finally settled, HIS HONOR THE PRESIDENT directed that it be republished for general information.

COURT OF WARDS.

On the motion of the HON'BLE MR. BUCKLAND, the Bill to amend the law relating to the Court of Wards was further considered in order to the settlement of the clauses of the Bill.

The HON'BLE MR. BUCKLAND moved that in section 5, line 1, the words "landed property" be substituted for "estates." The object of this amendment was to prevent the Bill from coming in conflict with section 2 of Act XL of 1858, under which the civil court had jurisdiction over the property of minors, except in the case of proprietors of estates paying revenue to Government. The substitution of the word "estates," as defined in the Bill before the Council, would have this effect.

The motion was agreed to.

The HON'BLE MR. BUCKLAND moved that section 13 be omitted; and he begged briefly to explain the reasons for this motion. On looking into the debates in connection with the passing of the Bill of 1877 he found that this section, which stood as section 80 of Act IV of 1870, was objected to by the Hon'ble Kristodas Pal and other members of the Council, and after an adjournment of the debate for a week, Mr. H. Bell, who was then in charge of the Bill, agreed to omit it for three reasons—it was too stringent, it was unjust, and it was also unnecessary—as it never had been applied in any case whatever, it being sufficient to rely on the provisions of section 12 of the Bill now before the Council. The reinstatement of the section was proposed at the last meeting of the Select Committee, and was accepted on that occasion. But, on further consideration, it seemed to MR. BUCKLAND unnecessary, and at any rate he thought the special attention of the Council should be directed to it if the section was to remain in the Bill.

The motion was agreed to.

The HON'BLE MR. BUCKLAND moved to substitute the words "the owner of such property" for the words "the property which would be liable for the debts of the deceased proprietor" at the end of section 29. The words now proposed were recommended by the learned Advocate-General, with reference to the discussion which took place at the last meeting of the Council on the amendment proposed by the hon'ble member opposite (Mr. Dampier), and they appeared to meet the object of the Bill.

The HON'BLE OFFICIATING ADVOCATE-GENERAL said that if the charge which the Collector was entitled to make was to be considered as a charge upon the estate of a deceased proprietor, then he took it that the words at the close of the clause should be "against the legal representative of the deceased." Then the Civil Procedure Code marked out what was necessary to be done in enforcing a decree which might be obtained. But if it was a charge upon the successors of the deceased, that is to say, a charge against them as owners, then he thought the proposed alteration of the hon'ble member in charge of the Bill would be sufficient. It might, perhaps, be advisable also to use these words in addition to the words he proposed: "or the person or persons whom the Collector declared to be in possession of such property." It was quite possible that the owner might not be in possession of the property, and it was desirable that the Collector should obtain repayment of those charges at once. The ADVOCATE-GENERAL also pointed out that the section would require alteration by inserting before the words "a demand" a declaration that they should be recoverable "as arrears of revenue" in order to meet the definition of "demand" in Act VII of 1868.

After some conversation amendments were agreed to which made the clause run as follows:—

"If the property is not afterwards taken under the charge of the Court, all expenses incurred by a Collector acting under this section shall be recoverable as arrears of revenue, and constitute a demand under Bengal Act VII of 1868 or any similar law for the time being in force, from the owner of such property, or the person or persons whom the Collector shall find to be in possession of such property."

In sections 31, 32, and 33, lines 7, 9, and 11, respectively, the HON'BLE MR. DAMPIER moved the substitution of the word "may" for "shall." Under the first of these sections, for instance, if the Collector reported the proprietor of an estate to be of unsound mind, he should report the matter to the Court, and the Court was bound to order the Collector to apply to the Civil Court. There appeared to be no reason why the Court should be obliged to apply for a commission *de lunatico inquirendo* if it did not see reason to do so. The amendment in the other two sections was for the same reason.

The motions were severally agreed to.

The HON'BLE MR. DAMPIER moved the omission of the words "disqualified under section 5" in section 51, lines 2 and 3, and in section 54, lines 3 and 4; also the omission of the word "such" in section 55, line 2, and the addition of the following words at the end of section 56—"or to a proprietor who has consented to leave his property under the charge of the Court of Wards, as provided in the second clause of section 10." The result of the three amendments would be that in every suit against a ward, except in the case of a major ward who left his property voluntarily in charge of the Court, the manager was to be the next friend for the purposes of the suit.

The motions were severally agreed to.

On the motion of the HON'BLE MR. DAMPIER, the words "arrears of revenue and constitute a demand" were substituted for "demand" in section 63, line 6.

The HON'BLE AMEER ALI enquired whether orders made under section 58 were appealable.

The HON'BLE MR. BUCKLAND replied that they would be appealable if passed by the Collector to the Commissioner of the division and the Board of Revenue, and if passed by the Board to the Lieutenant-Governor.

On the motion of the HON'BLE MR. BUCKLAND the Bill was then passed.

JUTE WAREHOUSES AND FIRE-BRIGADES.

On the motion of the HON'BLE MR. O'KINEALY, the report of the Select Committee on the Bill to consolidate and amend the law relating to jute warehouses and fire-brigades was taken into consideration, and the Bill was settled without amendment.

The Bill was then passed.

PASSENGER-BOATS.

The HON'BLE MR. MACKENZIE moved for leave to introduce a Bill to repeal certain sections of Bengal Act IV of 1866, and to provide for the levy of fees upon passenger-boats. He said that a few weeks ago this Council passed a

Bill purporting to place passenger-boats plying within the port of Calcutta under the control of the Conservator of the Port. The duty of controlling and registering such boats was at present in the hands of the Commissioner of Police under sections 63 to 65 of the Calcutta Police Act. The object of the Bill lately passed was, as the Council were aware, simply to enable the Lieutenant-Governor to transfer to the Port Commissioners those executive duties which the Commissioner of Police now performed, and to impose a scale of fees upon registration sufficient to cover the cost of that improved administration which was now found to be necessary. The rules under which the Port Commissioners were to work were to be passed by the local Government, as he had explained to the Council, both under the Indian Ports Act and under the proposed Bill; under the proposed Bill with reference to the scale of fees intended to be levied, and under the Ports Act with reference to the control and regulation of the boats. It never entered into any one's thoughts that by deciding to employ the ministerial agency of the Port Commissioners, the local Government was divesting itself of its legal and general power of control. The Legislative Department of the Government of India was, however, of opinion that "the Bill, in empowering the Conservator to regulate boats plying for hire within the limits of the port, conflicts with the provisions of the Indian Ports Act, 1875, section 7, clause (*k*), which gives the same powers to the local Government. To leave this power with both would (in the opinion of the Legislative Department) defeat the object of the Indian Legislature." Now, he had looked very carefully over the Bill again, and could nowhere find that it "left power with both," or "made over" in any way to the Port Commissioners the power of control which was vested in the local Government. Section 2 of the Bill ran thus—

"No passenger-boat or steam ferry shall ply for passengers either wholly within, or partly within and partly without, the limits of the port of Calcutta, unless duly registered at the office of the Conservator of the Port *under such rules*, and on payment of such annual or other fees *as the local Government may from time to time prescribe* by notification published in the *Calcutta Gazette*."

He could not, therefore, see how either the local Government, which distinctly reserved to itself the power to make all rules, and merely constituted the Conservator its minister and agent, had divested itself of control, or how the control was left to both. The Conservator merely stepped into the position at present held by the Commissioner of Police. He need scarcely assure the Council that it was never intended that the Lieutenant-Governor, attended by all his Secretaries, should go down personally to Chandpal Ghât, there to sit and measure dinghees as they came up, paint their numbers on the manjees' tickets, and make over to them their licenses. Nor did it appear after all that the Government of India itself imagined that such procedure as that was absolutely necessary, for the Secretary to that Government in the Legislative Department went on to say "that the Bill would be just as effective if turned into the form of a rule under the Ports Act."

Now this was a very serious charge to bring against the mover of the Bill and against the Executive Government, which was responsible for introducing

it before this Council. It implied that they came before this Council, and took up the time of all the honorable members on several occasions, and the time of the Select Committee on more days than one, to discuss a Bill which after all was perfectly unnecessary. Fortunately he could say that there never was a petty measure brought before the Council, the necessity for which was so strongly pressed upon Government by its legal advisers, as this Bill which the Legislative Department deemed so utterly unnecessary. They had first the joint opinion of Mr. Paul, the Advocate-General, and of Mr. Evans, a gentleman specially chosen to sit on the Supreme Legislative Council on account of his legal skill, to the effect that so long as sections 63 to 65 of the Police Act remained in force, rules passed under the Ports Act could in no way affect passenger-boats plying for hire in Calcutta, and fresh legislation was absolutely necessary. They said: "We think the words 'cargo and other boats' (in section 7 of the Ports Act) must be taken in a restricted sense, and do not authorize the local Government to deal with passenger-boats, the licensing of which is already dealt with under the Police Act." Not content with that, the Government took the advice of their other legal advisers. They had the opinion of two Legal Remembrancers, that as "sections 63 to 65 of Act IV of 1866 expressly provided for the registration of passenger-boats, therefore it was not competent for the Government to make rules under Act XII of 1875 which would in any way conflict with the Police Act." He trusted therefore that he had shown the Council that they had had *primâ facie* justification for troubling them with the Bill. But the Council would ask, "Why, having now the opinion *per contra* of the Legislative Department of the Government of India, endeavour to override this expression of opinion? Why now again come forward and ask for leave to introduce a fresh Bill?" They had heard a great deal of late years about the limits of the legislative powers of this Council: but whatever limit there might be upon those powers, there could, with all due deference to the Legislative Department, be no doubt whatever that no rules which the local Government might pass could have the effect of repealing sections of the statute law. He did not know how any rules that they could pass under the Ports Act could suffice to repeal sections 63 to 65 of the Police Act; and they had in the papers before them a distinct and positive opinion of the Advocate-General and other legal gentlemen, that so long as those sections existed there was at least a doubt whether rules under the Ports Act could affect passenger-boats at all, and a further decided opinion that no rules which the local Government could pass would suffice to impose charges in the shape of fees for licensing and registering passenger-boats. He was therefore compelled, with the permission of His Honor the Lieutenant-Governor, to come before the Council to ask for leave to introduce another Bill which should avoid what he could not but conceive to be the very technical difficulties discovered by the Legislative Department of the Government of India in the Bill so lately passed. The Bill now proposed would simply repeal certain sections of the Police Act, and enable the local Government to levy fees, omitting all words regarding control. If they found that the courts in any case decided that the

The Hon'ble Mr. Mackenzie.

rules under the Ports Act to which they would now have to trust for regulating those boats were insufficient, they would have to go up to the Government of India to ask for leave to introduce another Bill.

He was obliged to press for urgency for this measure. The local Government never had had any reason to doubt that the former Bill would pass. The Port Commissioners had already entertained an establishment for carrying out the improved registration proposed. They never had had the slightest idea that there would be any difficulty in transferring the work of registering passenger-boats from the Commissioner of Police to them. Improved control was necessary, looking to the loss of life arising from the very insecure boats at present plying, and he would therefore ask for leave to introduce this measure, and he would then ask that the rules for the conduct of business in the Council be suspended that he might have a committee appointed and the Bill pushed on as fast as possible.

His Honor the President said he felt some sort of apology was due from the Government for having asked the Council to pass a Bill which was declared on high authority to be *ultra vires*, and at the same time unnecessary. He could only assure the Council that before moving in the matter of the Bill which had just been vetoed, Government had done everything in its power to satisfy itself that its action was legal and necessary. He had taken the opinion of the learned Advocate-General and of Mr. Evans, one of the most eminent members of the bar of Calcutta, himself a member of His Excellency's Council; and he had also the opinions of two successive Legal Remembrancers: and the opinion of all these competent men was entirely in accordance with that of the local Government; but then, on the other hand, while these gentlemen declared the action of the local Government to be legal and necessary, there was the opinion of the Legislative Department of the Government of India to the effect that it was illegal and unnecessary. It was not His Honor's position to sit in judgment on the very opposite opinions of these conflicting authorities; and though he might have a very clear and decided personal opinion as to which was right and which was wrong, it would not be becoming for him to press it. It was his duty to accept the opinion of the Legislative Department whatever he might think of it, and he was therefore compelled, much against his will, to trouble the Council to pass a short Bill, which he hoped might satisfy the Legislative Department of the Government of India.

The motion was agreed to, and, after suspension of the rules, the Bill was read in Council and referred to a Select Committee, consisting of the Hon'ble Mr. O'Kinealy, the Hon'ble Ameer Ali, and the Mover, with instructions to report to the next meeting of the Council.

The Council then adjourned to Saturday, the 12th April 1879.

Saturday, the 12th April 1879.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The Hon'ble J. D. BELL, *Officiating Advocate-General*,
The Hon'ble C. T. BUCKLAND,
The Hon'ble H. L. DAMPIER,
The Hon'ble A. MACKENZIE,
The Hon'ble J. O'KINEALY,
The Hon'ble AMEER ALI,
The Hon'ble MOULVI AMEER HOSSAIN,
The Hon'ble BABOO MOHINI MOHAN ROY,
and
The Hon'ble A. B. INGLIS.

POWERS OF SETTLEMENT OFFICERS.

THE HON'BLE MR. DAMPIER, before moving that the Bill to define and limit the powers of Settlement Officers be passed, moved the following amendments, which he said were of a verbal and formal character:—

In section 7, the substitution of the word "tenure" for "under-tenure" wherever it occurred.

The omission of the last paragraph of section 7 and the insertion of the following after paragraph 1 of section 10:

"But nothing in clause (*c*) of section 7 of this Act or in this section shall be held to limit the discretion of the court in determining in any suit under this section the rent of an under-tenant of the class described in the said clause (*c*)."

This amendment simply amounted to the transposition of what was now the last paragraph of section 7 with the necessary verbal amendments. The object was to provide that, in the case of under-tenants whose tenures were not binding on the Government, the proceedings of the Settlement Officer should in no way bind the discretion of the Civil Court if a suit was instituted. Such a provision would come in better under section 10, which applied to suits instituted to contest the Settlement Officer's proceedings.

Verbal amendments in the second paragraph of section 10 and in section 11.

The amendments were severally agreed to.

On the motion of the HON'BLE MR. DAMPIER the Bill was then passed.

INLAND STEAM VESSELS.

The HON'BLE MR. INGLIS moved that the report of the Select Committee on the Bill to provide for the proper management of certain inland steam vessels be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee. The Committee, he said, who took charge of this Bill, had not received any criticisms of a hostile character from the parties affected by the Bill, but a hope was expressed by them that

care would be taken, in framing the rules for the examination of commanders of inland steamers with a view to the granting of certificates, that they would not operate harshly towards old and experienced commanders of the lines of steamers now running. The assurance had since been given to him that the Government would take care that fair consideration was paid to such cases, and with a view further to consider the interests of those concerned, the Bill provided that the rules should be published in the *Calcutta Gazette* at least two months before they took effect.

The only material alteration which the Select Committee had made in the Bill was to state more precisely the cases in which notice of accidents occurring to, or on board of, inland steam vessels was to be given to the local Government.

The HON'BLE MR. MACKENZIE observed that it was very satisfactory to the Executive Government to know that this Bill was approved by those who were interested in the navigation of inland steam vessels. He was authorized to state that the rules to be passed under the Act would be drawn, as the Bill had been framed, in communication with those whom they would affect. The Bill itself provided that they should not take effect until two months after their publication in the Gazette; but besides this, he could promise that in drawing them up, those who were interested in the matter would be consulted. The Select Committee, he might add, had endeavoured to avoid any clashing or collision with the Indian Ports Act or the Indian Merchant Shipping Act of 1875, which provided a procedure for cases of accidents to sea-going vessels.

The motion was then agreed to, and the Bill was passed after a verbal amendment in section 4.

PASSENGER BOATS.

On the motion of the HON'BLE MR. MACKENZIE the report of the Select Committee on the Bill to repeal certain sections of Bengal Act IV of 1866, and to provide for the levy of fees upon certain passenger-boats and steam ferries, was taken into consideration in order to the settlement of the clauses of the Bill, and the Bill was passed without amendment.

STEAM TRAMWAY BETWEEN SILIGOREE AND DARJEELING.

The HON'BLE MR. MACKENZIE moved for leave to bring in a Bill to provide for the construction of a steam tramway between Siligoree and Darjeeling. As the Council was doubtless aware, arrangements had been made with a Company for the construction of a steam tramway on the cart road between Siligoree and Darjeeling. All the necessary provisions for guarding the interests of the public and of Government had been carefully drawn up and set forth in the contract between the Government and the Company, but it was deemed desirable that legal power should be given to the Company to construct the tramway on the cart road. The road being now open to the public, it was thought probable that legal difficulties might arise from the fact that the operations must necessarily, during the period of construction, cause some temporary obstruction to traffic. It was proposed to legalise the occupa-

tion of the road by the Company for the purpose of its operations and to enable it to run steam engines thereupon.

The Bill was a very short one, and he might say an urgent one.

The motion was agreed to.

The HON'BLE MR. MACKENZIE applied to the President to suspend the rules for the conduct of business, to enable him to carry the Bill through its subsequent stages.

HIS HONOR THE PRESIDENT remarked that as the Bill was only intended to give legal effect to an agreement which had already been completed and signed in the form of a contract between the Government and the Darjeeling Steam Tramway Company, Limited, he thought there was no great impropriety in his suspending the rules, and he accordingly declared the rules suspended.

The HON'BLE MR. MACKENZIE then moved that the Bill be read in Council.

The HON'BLE THE OFFICIATING ADVOCATE-GENERAL moved the insertion of the following section with the view of avoiding possible difficulties afterwards. The object of the section was to give the Company authority to obstruct the cart road in the course of making the tramway :—

"The Company may, with the permission of such officer as the local Government may from time to time empower in that behalf, obstruct the said cart road, but in such case the Company shall provide such accommodation for the local traffic during such obstruction as the said officer shall direct."

HIS HONOR THE PRESIDENT believed the proposed section would make the matter clearer. But it was not correct to attach too great importance to this question of obstruction. The road was not a road made from local or provincial funds. It was a State road maintained from the public funds, and had often, in the interests of the public, been closed to traffic for weeks together. The object of the construction of the tramway was to facilitate the traffic which now went by carts; for weeks together the cart traffic was stopped in consequence of the difficulty of obtaining cattle. Although it was possible that portions of the road might be obstructed here and there during the construction of the tramway, it would eventually do away with the obstructions to traffic from which the public now suffered. For instance, last year the whole of the food-supply was stopped for weeks together, almost to an extent involving famine. On the whole, however, HIS HONOR thought the clause proposed by the learned Advocate-General would secure sufficiently the interests of the public.

The proposed section was then agreed to and the Bill read in Council.

The Secretary was instructed to insert in the preamble of the Bill the date of the agreement which had been entered into with the Company; and on the motion of the HON'BLE MR. MACKENZIE the following words were inserted in line 7 of section 2 :—

"or any agreement which may hereafter be entered into between the Company and the said Secretary of State."

The Bill was then read in Council, and, on the motion of the HON'BLE MR. MACKENZIE, the Bill was passed.

The Council was adjourned *sine die.*

W. H. D'C. and others—Reg. No. 4312—200—30-6-79.

Saturday, the 13th December 1879.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The Hon'ble G. C. PAUL, C.I.E., *Advocate-General*,
The Hon'ble C. T. BUCKLAND,
The Hon'ble H. L. DAMPIER,
The Hon'ble A. MACKENZIE,
The Hon'ble J. O'KINEALY,
The Hon'ble SYUD MOULVI AMEER HOSSEIN,
The Hon'ble MOHINI MOHUN ROY,
The Hon'ble A. B. INGLIS,
The Hon'ble KRISTODAS PAL, RAI BAHADOOR, C.I.E.,
The Hon'ble J. B. KNIGHT, C.I.E.,
The Hon'ble C. D. FIELD, LL.D.,
and
The Hon'ble PEARY MOHUN MOOKERJEE.

NEW MEMBERS.

THE Hon'ble MR. FIELD and the Hon'ble PEARY MOHUN MOOKERJEE took their seats in Council.

CALCUTTA TRAMWAYS.

THE HON'BLE KRISTODAS PAL moved for leave to bring in a Bill to authorize the making and to regulate the working of street tramways in Calcutta. He said the first experiment in tramways in Calcutta, as hon'ble members were doubtless aware, had not left a very pleasant memory behind. It was undertaken by the late Justices in 1873 at the instance of the Government, and its failure was attributed to the action of the Government. The late Justices, in their administration report for 1875, thus noticed this fact. They stated—

"*1st.*—That the tramway was constructed to meet the wishes of Government.

2nd.—That the tramway proved a financial failure owing to the action of Government, and not from causes within the control of the Corporation.

3rd.—That the Justices were prevented by Government from concluding a most advantageous arrangement for the disposal of the tramway at cost price. For the above reasons the Justices maintained that they had an equitable claim to be reimbursed the expense, amounting to about Rs. 1,60,000, incurred by them.

As the above scheme was initiated by Government, and its success marred by Government allowing the Port Commissioners and the Eastern Bengal Railway Company to have competing lines, the Justices repudiate all responsibility for the failure which has taken place and the waste of public money incurred, especially as, notwithstanding the failure of the scheme, the rate-payers might have been saved from all loss had not Government stepped in and prevented the Justices concluding the sale of the tramway to a capitalist of the city."

Such were the rise and the fall of the first tramway in Calcutta, if he might so express himself. But the present project was founded on a totally different basis altogether. It was now proposed that tramways should be constructed by a private company, and that the Municipality or the Corporation should give to them the franchise of the roads upon which the lines would be laid. The Municipality would charge a moderate rent, but the management of the tramways would be left entirely to the grantees. The Municipality at present derived no inconsiderable revenue from hackney coach receipts and from the horse and carriage tax and the tax on hackeries, and it was feared that a good portion of this revenue might be lost in consequence of the introduction of tramways. But that was, he might say, problematical. He was told that the hackney carriage traffic had not suffered from the introduction of tramways in Bombay. Besides, this loss would be recouped by the Municipality in two ways. It would, as he had stated, derive rent for the use of the roads, and also save the cost of repairs of nearly one-third of the roads on which the trams would run. To the public, he need hardly say, the introduction of tramways would be a great advantage, and the experience gained in Bombay showed that, given the same conditions, there was no reason why the scheme should not succeed in Calcutta.

The object of the present Bill was to confer the necessary legal powers on the Corporation and the grantees for carrying out the contract, which had been already agreed to between them and sanctioned by Government. It had not been thought advisable to embody all the terms of the contract in the Bill. While validity would be given to the agreement, occasion had been taken to secure the rights and interests and the convenience of the public. The Bill followed the lines of the Bombay Tramways Act, with such slight variations as the agreement already entered into between the Company and the Corporation might require. The project, he should mention, was in good hands. The promoters, Messrs. Parrish & Co., had already achieved much success in this line in the United-Kingdom, and the Council might therefore fairly expect that they would carry out the scheme in Calcutta with equal success.

The details of the agreement had been fully considered by the Corporation and the grantees and their attorneys, and as the Government had sanctioned the agreement, he did not think it was necessary for him to dwell on the terms of the contract.

There were one or two provisions made in the Bill with the view of enabling the grantees to extend tramways to the suburbs, if the extension was thought desirable, and to these he would draw attention when he would move for the reading of the Bill. At present he moved for leave to introduce it.

The motion was put and agreed to.

The Hon'ble Kristodas Pal said he had already stated that the Corporation and the grantees had formally executed the agreement and that the Government had sanctioned it. Both the Corporation and the Company were anxious that they should commence the works at once, and they were therefore solicitous that, as this was the working season, no time might be lost in

The Hon'ble Kristodas Pal.

conferring upon them the necessary legal powers. Under the circumstances, he applied to His Honor the President to suspend the Rules for the conduct of business in order that the Bill might be read in Council.

The PRESIDENT having declared the Rules suspended—

The HON'BLE KRISTODAS PAL moved that the Bill be read in Council. He had already given some account of the origin of this Bill. As the Bill had been in the hands of hon'ble members, he need not recapitulate its detailed provisions. He might mention that it sanctioned seven lines of tramway which were enumerated in section 2. It further provided that, subject to the approval of the Corporation of Calcutta and the Suburban Municipal Commissioners, and the sanction of the local Government, the grantees might take up any new lines which they might think fit, and if they extended their operations to the suburbs, the provisions of the Bill would apply *mutatis mutandis*. The other provisions of the Bill were matters of detail which might be best considered in select committee. There was one provision in the Bill which was borrowed from the Bombay Act. It gave power to the grantees to sell their rights and powers to other persons, and such persons should also be subject to the provisions of the Bill in the same way as the original grantees. That provision did not obtain in the agreement between the Corporation and the grantees, nor in the Bombay agreement, but it was in the Bombay Act, and he thought it might be fitly embodied in this Bill. There were some provisions in the English Tramway Acts which he for one thought might well be made applicable to Calcutta, but he reserved those points for consideration in select committee. With these words he moved that the Bill be read in Council.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of the Advocate-General, Mr. Field, Mr. Mackenzie, Mr. Knight, Mr. Inglis, and the Mover, with instructions to report in four weeks.

AMENDMENT OF THE CALCUTTA PORT IMPROVEMENT ACT.

THE HON'BLE MR. BUCKLAND moved for leave to bring in a Bill to amend the Calcutta Port Improvement Act, 1870. He would not trouble the Council at any great length with an explanation of this Bill. It was simply a Bill to amend the borrowing powers of the Port Commissioners. The Government of India had decided that in future the Port Commissioners were to raise their money in the open market, and certain sections of the Act were declared by the Government of India to have been already impliedly repealed by an Act of 1871, which in its turn was repealed by an Act of 1879. Therefore it became necessary for this Legislature to pass an Act giving further powers of borrowing to the Port Commissioners, and at the same time to enable the Government of India to dispense with the primary lien which it held on its previous advances, and to put itself in future on an equality with the other creditors.

The details of the Bill were of a purely technical nature, and he therefore concluded by asking for leave to introduce it.

The motion was agreed to.

CONTAGIOUS DISEASES (ANIMALS) BILL.

THE HON'BLE MR. O'KINEALY moved for leave to introduce a Bill to provide against the spreading of contagious diseases among animals. His Honor and the members of Council were no doubt well aware that the evils arising from the absence of any law sufficient to check the spread of such diseases had become so serious that an Act for the prevention of the latter was lately passed in the Imperial Council. This law extended only to those provinces of the empire in which there was no local legislature, and did not apply to Bengal.

Calcutta was the great horse mart of India,—the centre of the import trade in those animals. The town itself contained 386 hackney coach stands; the suburbs about 246 more. It was easy to understand that if once any infectious disease got firmly rooted among the hundreds of animals maintained by the carriage-owners, it would take years before it could be eradicated, and the town would become a focus for its dissemination throughout India. And yet it was stated by the officers competent to give an opinion that diseased horses were not only driven about the city, but even into the largest stables.

Every motive which induced the Government of India to legislate for the Upper Provinces applied with tenfold force to induce the Government of Bengal to pass a somewhat similar enactment for Calcutta and the suburbs.

One of the great difficulties which was met with in overcoming contagious diseases arose from an absence of any authentic information regarding the animals affected. The owners who were interested in remaining silent would not give it, and the officials who were not so interested were not in a position to obtain it. Both matters were provided for in the Bill.

Then, again, it had been found by experience that once the disease had developed, the diseased animals seldom recovered, and prolonged existence, though of no advantage to the owners, was a source of potential loss to the people living in the neighbourhood. There also the Bill afforded protection in a manner somewhat similar to the Imperial Act.

The motion was agreed to.

DRAINAGE AND IMPROVEMENT OF LAND.

THE HON'BLE MR. DAMPIER moved that the name of the Hon'ble Mr. Field be added to the Select Committee on the Bill for the drainage and improvement of land.

The motion was agreed to.

The Council was adjourned to Saturday, the 20th December.

Saturday, the 20th December 1879.

Present:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *presiding*,
The Hon'ble G. C. PAUL, C.I.E., *Advocate-General*,
The Hon'ble C. T. BUCKLAND,
The Hon'ble H. L. DAMPIER,
The Hon'ble A. MACKENZIE,
The Hon'ble J. O'KINEALY,
The Hon'ble SYED AMEER HOSSEIN,
The Hon'ble A. B. INGLIS,
The Hon'ble KRISTODAS PAL, RAI BAHADOOR, C.I.E.,
The Hon'ble J. B. KNIGHT, C.I.E.
The Hon'ble C. D. FIELD, LL.D.
and
The Hon'ble PEARY MOHUN MOOKERJEE.

AMENDMENT OF THE CALCUTTA PORT IMPROVEMENT ACT, 1870.

THE HON'BLE MR. BUCKLAND moved that the Bill to amend the Calcutta Port Improvement Act, 1870, be read in Council. He did not propose to trouble the Council with any lengthy remarks and explanations on the sections of the Bill. It was not the custom at meetings of the Port Commissioners to make speeches of any length. There was, however, a statement in the preamble of the Bill which might perhaps puzzle some hon'ble members: he alluded to the statement about a certain sum of Rs. 17,65,000. That sum represented the value of what might be called the block of the port, and consisted of buoys, chains, anchors, and other things of that kind, most of which were under water. The Government valued the stock at Rs. 17,65,000 when they made over charge of the port, and that was why it stood upon a separate footing from the rest of the money which had been borrowed from the Government. Then, again, in the preamble there was mentioned a sum of Rs. 54,22,567. That sum would have to be altered, because the Port Commissioners were in the habit of paying off their debts very steadily, and the debt would consist of about Rs. 53,22,567 by the time the Bill became law.

The Bill repealed many provisions of the Act of 1870, but it did not affect the validity of anything done or suffered, or of any right, title, obligation or liability which accrued under the old Act.

Then he came to a section which provided for a special arrangement. Although the Port Commissioners were not to borrow from the Government any more, this Act enabled them immediately to borrow from the Government the whole sum necessary to repay the existing debt to the Government. They would lend the Port Commissioners with one hand and take it back with the other. Having lent them this sum, (say) 54 lakhs, they would immediately repay themselves the debt now due to them, and stand upon the same footing

as all the future creditors of the Port Commissioners. The other sections were re-enacted almost verbatim with the necessary alterations.

Then they came eventually to a new section (19), which was a modification of section 82 of Act V of 1870, relating to the power of the Commissioners to make bye-laws. The learned Advocate-General would probably remember that his opinion was taken regarding the meaning of section 82 of Act V of 1870. When the Act of 1870 was drafted, section 82 was set forth in one long sentence, and because in the first sentence it was said that the Port Commissioners might make rules for their own servants, therefore the lawyers were afraid that the courts might hold that all their rules under the section would apply only to their servants. Doubtless to an ordinary mind it seemed astonishing that bye-laws which were only to regulate the conduct of the Port Commissioners' servants should need to be published and sanctioned by the Government. But in order to give the highest authority to the proposed alteration of the power to make bye-laws, the section in the present Bill was taken from the latest Bill turned out from the anvil of the Government of India,—namely, the Rangoon Port Bill.

There remained section 20 of the Bill, in which it was provided that the words "conveyance of passengers and" should be inserted after the word "appliances" in section 39, paragraph 2 of Act V of 1870, relating to the tramway which the Port Commissioners had. As a matter of fact they had not at present the means of carrying passengers, nor the proper contrivances to enable them to do so, and the goods traffic was so considerable that it was very improbable that they would ever be able to carry passengers, especially if the East Indian Railway came to this side of the river. But it might be possible that it would be the duty of the Commissioners to carry passengers in connection with goods, and therefore with the words now proposed they would keep themselves within the law.

The Hon'ble Kristodas Pal said he had not intended to make any comments upon this Bill, but the remarks which had fallen from the hon'ble mover suggested a doubt as to whether the Port Commissioners should be vested with the power given by section 20 of the Bill of carrying passengers in the town by their tramways. Hon'ble members were aware that there was already a Bill before the Council regarding tramways in Calcutta, and if the Port Commissioners should take advantage of the power proposed to be conferred upon them of carrying passengers in their tramways, there would be competition between them and the grantees of the Municipal Corporation. As on a former occasion competition led to the ruin of the Municipal tramway, so competition again between the Municipal grantees and the Port Commissioners would, he was afraid, be to the disadvantage of both, if not ruinous to one of them. The hon'ble mover said that the Port Commissioners had not now the necessary appliances for carrying passengers in their tramway, and that they did not intend to carry passengers, but that it was thought desirable to have the power; in other words, if the Port Commissioners should find that the carrying of passengers would be profitable, they might make the necessary appliances and exercise the power proposed to be given to them.

The Hon'ble Mr. Buckland.

BABOO KRISTODAS PAL did not think it advisable to have two competing lines of tramway between a few yards of each other, such as the Calcutta and Port Commissioners' tramways would be.

There was also another provision in the Bill which called for remark: he alluded to section 19, clause (*e*), which gave power to the Port Commissioners to provide water for ships and for licensing and regulating water-boats within the port. He did not know whether hon'ble members were aware that there had been a contention going on for some time past between the Port Commissioners and the Town Commissioners in respect of supply of water to the shipping, and that the Town Commissioners had claimed the right and had gone to heavy expense to provide the necessary apparatus for the purpose. He did not know to what extent this power would be exercised by the Port Commissioners, but it was a question whether they should have power regarding a duty which had hitherto been discharged by the Town Commissioners in a satisfactory manner. Not only would they under the Bill have the power of supplying water to the shipping, but also to regulate water-boats within the port. He did not think it would be just or expedient to give another Corporation power over the arrangements and appliances of a rival Corporation in the discharge of its own duties. The water-boats in the port now belonged to the Town Commissioners; with those boats water was supplied, and they ought to have full power to regulate their own boats. He did not know for what reason, or with what object, this power was claimed by the Port Commissioners; but he hoped the Select Committee would take this point into consideration.

HIS HONOR THE PRESIDENT said he had no doubt that the Select Committee to whom this Bill would be referred would look into all the papers on the subject, and make such provisions in the Bill as they might think necessary. He did not understand the hon'ble member to oppose the reading of the Bill, and if the principle of the Bill was accepted, the details could thereafter be discussed in Select Committee.

The HON'BLE MR. BUCKLAND said he should be happy to consider in select committee the suggestions which the hon'ble member had made.

The Bill was then referred to a Select Committee, consisting of the Hon'ble the Advocate-General, the Hon'ble Mr. Mackenzie, the Hon'ble Mr. Field, the Hon'ble Mr. Inglis, the Hon'ble Peary Mohun Mookerjee, and the mover, with instructions to report in three weeks.

CONTAGIOUS DISEASES AMONG ANIMALS.

The HON'BLE MR. O'KINEALY moved that the Bill to provide against the spreading of contagious diseases among animals be read in Council.

The HON'BLE KRISTODAS PAL said he was sorry to observe that in introducing this Bill the hon'ble member in charge had placed before the Council such scant information showing the necessity for the measure. The statement of objects and reasons was dismissed with about ten lines, and was not accompanied by any official papers whatever, showing whether there had been any such increase of contagious diseases among animals in Calcutta as to necessitate the proposed measure.

In his introductory speech the hon'ble member laid great stress on the Bill which had been introduced into the Council of His Excellency the Governor-General. He said—

"Every motive which induced the Government of India to legislate for the Upper Provinces applied with tenfold force to induce the Government of Bengal to pass a somewhat similar enactment for Calcutta and its suburbs."

It was not for BABOO KRISTODAS PAL to enquire whether there were good and valid reasons for the introduction of a Bill of this kind in the other Council, but every member of His Honor's Council had a right to know what reasons did exist for the entertainment of a measure of this kind for these provinces. If the rate of mortality amongst horses in Calcutta had not been more than what was ordinarily the case, and if no necessity was established for such a rigorous law as was proposed, he did not think this Council would be justified in sanctioning it. He dared say the hon'ble member would be able to put the Council in possession of papers which would show the necessity for such legislation. But looking to the Bill as it was put before the Council, he must confess that the machinery it provided would perhaps do more harm than good. In the first place the Bill was not complete in the definition of "contagious disease." It said—

"'Contagious disease' means glanders, farcy, and any disease which the Lieutenant-Governor may from time to time, by an order published in the *Calcutta Gazette*, declare to be a contagious disease for the purposes of this Act."

With all deference, BABOO KRISTODAS PAL submitted that it was the duty of this Council to define by its own enactment what diseases should be brought within the scope of the Bill. Surely His Honor the President would admit that, aided by his Council, he was more competent to define "contagious disease" than he would be as the head of the Executive Government.

Again, it was provided that owners of diseased animals should give notice when any animal was affected with any contagious disease. With regard to the diseases of glanders and farcy, BABOO KRISTODAS PAL could say on behalf of native gentlemen that he doubted whether one out of a hundred could at the early stage of the disease discover what it was, and it would therefore be very hard if from suspicion that an animal was so affected a person who did not give information should be subjected to a penalty of Rs. 500 as provided in the Bill.

Then, again, it was provided that an animal affected with glanders or farcy was to be slaughtered on the certificate of a Veterinary Surgeon, or in his absence of a Civil Surgeon or an Assistant Surgeon. Now, if the disease should really exist, and a competent person should certify to the fact of the disease, certainly there could be no reasonable objection to the destruction of the animal. But it was well known that the Assistant Surgeons as a body knew nothing about horse diseases, and it would be most dangerous to authorize them to grant certificates and empower police officers to act upon such certificates. With regard to Civil Surgeons, he did not know how far they were acquainted with such diseases: it was Veterinary Surgeons alone who possessed a special knowledge of the subject. If this provision were restricted to Veterinary Surgeons, BABOO KRISTODAS PAL would not object to it; but, as it was

The Hon'ble Kristodas Pal.

framed, it applied also to Civil Surgeons and Assistant Surgeons, the majority of whom, as he had already remarked, could not be presumed to possess a scientific knowledge of horse diseases, and the result he feared would be abuse of power and oppression. Armed with a certificate thus given, the police officer would seize the suspected animal, and if so inclined might slaughter it; or on pretence of suspicion he might first seize the animal, and afterwards take a certificate from an incompetent Assistant Surgeon, and under its authority destroy a valuable horse. If Civil Surgeons and Assistant Surgeons without special training could not fairly be expected to be acquainted with diseases among animals, how much less could a police officer be expected to have such knowledge; but the section in question gave power to a police officer to seize a horse on mere suspicion of disease. He thought such a provision would lead to much hardship and oppression. For his own part BABOO KRISTODAS PAL thought the object of the Bill was good, but the machinery for putting it into force should be different from what was contemplated in it. If a hospital were established, and if suspected animals were taken to such an hospital and there kept under observation, and in cases of actual outbreak of disease the infected animals were slaughtered, probably a sufficient safeguard against a wanton interference with private rights would be provided. It was observable that the English Contagious Diseases of Animals Act provided that, when a diseased animal was slaughtered, compensation should be given to the owner of the animal so slaughtered, but no such provision obtained in this Bill.

And lastly, he considered it his duty to enter his protest against that part of the Bill which authorized the slaughtering of cows and oxen under suspicion of being affected with contagious diseases: Such a provision would be most revolting to the religious feelings of the Hindu community. The hon'ble member in charge of the Bill had neither in the statement of objects and reasons, nor in his introductory speech, said anything to show that cows and oxen were subject to glanders or farcy, but the Bill as it was framed had for its object the suppression of those contagious diseases.

BABOO KRISTODAS PAL had thought it proper to refer to an experienced Veterinary Surgeon on this point, and he wrote as follows:—

"Cows, oxen, and all horned cattle are not susceptible to 'glanders' or 'farcy.' Even when they are inoculated with the matter taken from an affected horse, they fail to take the disease."

Then BABOO KRISTODAS PAL thought the hon'ble member must mean some other contagious diseases than glanders and farcy. But if he did so, he ought to have proved that such contagious diseases were prevalent among cattle, and that there was an extraordinary mortality in consequence, before he asked for legislative interference. All that had been said was about horses, but cows and oxen were included in the Bill. If it was at all thought necessary to extend the Bill to cows and oxen, he would suggest that provision be made for the isolation and treatment of diseased cows and oxen, instead of a summary law for their slaughter. BABOO KRISTODAS PAL did hope that hon'ble members would take this point into consideration and not sanction any provision of law which was calculated to grossly outrage the religious feelings of the Hindus.

The HON'BLE MR. O'KINEALY said he understood the hon'ble member who had just spoken to say, first, that there was no reason for the introduction of this Bill; and secondly, that the object of the Bill was good. MR. O'KINEALY thought under those circumstances that it was hardly necessary for him to enter into details and give reasons which induced the Government of Bengal to introduce this Bill. The reasons which induced the Supreme Government to introduce a somewhat similar enactment had been elaborately given in the Gazette of the Government of India, and he for his part thought that any gentleman referring to those papers would see that the Government had made out a *primâ facie* case for the introduction of the law. If the hon'ble member was not satisfied with that, and he wished to know any other reasons which induced the Government of Bengal to take up this measure, MR. O'KINEALY would be happy to place in his hands all the papers that were at his disposal. He did not think that the Government would be satisfied to pay money compensation for horses affected with glanders or farcy which in 99 cases out of a hundred would die.

But all these objections went rather to the details of the Bill than to the Bill itself, and as the hon'ble member who had raised those objections would be placed upon the Committee, he would have every opportunity for discussing the details.

HIS HONOR THE PRESIDENT, before putting the motion, said that to a great extent he concurred in the objections which had been taken by the hon'ble member on the left (Baboo Kristodas Pal) in his remarks on the subject of this Bill. The Bill, he might say, was pressed upon this Government by the Government of India for very good reasons, which he was sorry to say had not been stated to the Council. There had been a great deal of mortality of late amongst horses, and especially so amongst the Government troops. His Excellency's Bodyguard had been almost decimated last year by an infectious disease which they were said to have contracted in Calcutta; and he might mention that a detachment on duty as his own bodyguard had also suffered some time ago, and the Colonel of the regiment from which his bodyguard was supplied had brought to notice two years ago the great danger to horses in Calcutta in consequence of frequent outbreaks of glanders and farcy amongst horses brought down to Calcutta. If these two very prominent cases occurred under the eyes of their own officers, there was good reason to believe that the disease was general in the town: if it affected Government in this way, it might be understood that it also affected private persons to a still greater extent. When a disease of this sort got into the town and spread about—and it had spread about—there was no calculating the mischief it might do. There had been considerable correspondence on the subject which was not published. Admitting that it was an evil, Government was clearly bound, with a view to protect private property, to do something; but he thought there was a great deal of truth in what had been said as to the manner in which the Bill proposed that remedial measures should be carried out. He thought that while protecting those who kept horses, the Council must as far as possible protect the interests of those who were exposed to be dealt with under the Act as being suspected of having diseased animals. He thought the Bill was very rough and summary in its mode of procedure, and that such

procedure was rather calculated to suit the interior of the country than a very large town like Calcutta, where there were numerous facilities for putting diseased animals under proper treatment, and so ascertaining what was wrong with them through the agency of specially skilled men. He thought there was a good deal in the objection that Surgeons and Assistant Surgeons should not be allowed to meddle with these things; they could really know little or nothing of horse diseases. The certificate should be given by a qualified Veterinary Surgeon, of whom there were plenty in Calcutta, and he also thought that arrangements should be made for a hospital of observation to which suspicious cases of animals diseased might be removed until all doubts as to the disease were disposed of.

As to the definition of "contagious disease," he could not accept, as had been proposed by Baboo Kristodas Pal, the responsibility of deciding, with the help of the twelve gentlemen around him, what were contagious diseases: he would sooner, when any question arose, consult Veterinary Surgeons, and would therefore leave the section as had been originally proposed. He believed that as to this definition great difficulty was felt in the Council of the Governor-General. He thought it was better to leave some amount of elasticity in the definition in order that, when any new disease broke out, after consulting qualified veterinary officers, such disease might be included.

As to cows and oxen, he was not at all prepared to agree that this Act ought to be made into a Cattle Diseases Act. He understood that the Bill was to be confined to dealing with diseases amongst horses, and he did not think that anything had occurred to show that any provision of the sort in regard to the diseases of other cattle was required in Calcutta, and he should be very glad that the Select Committee should consider whether there was any ground for including oxen and heifers and cows in the definition of "animal" in the interpretation clause. He did not think that that was the main object of the Bill, and he was sorry that the provision should have been brought into the Bill in such a manner, as he could quite understand the provision of the Bill as it stood must be very offensive to the religious prejudices of the people. He would be the last person to accept such prejudices when unreasonably urged as an objection to a measure really affecting the interests of the public at large; but looking to the way in which this Act had been drawn, he thought there was much in the Bill which might become very offensive to Hindus with regard to the destruction by the owners of cows and cattle which were supposed to be affected with contagious diseases. These, however, were all subjects that would be taken up by the Select Committee, and he hoped they would give their careful consideration to them before dealing with the subject.

The motion was agreed to, and the Bill referred to a Select Committee, consisting of the Hon'ble Mr. Field, the Hon'ble Mr. Inglis, the Hon'ble Kristodas Pal, the Hon'ble Syed Ameer Hossein, and the mover, with instructions to report in four weeks.

ROAD AND PROVINCIAL PUBLIC WORKS CESSES.

THE HON'BLE MR. DAMPIER moved for leave to bring in a Bill to repeal "The District Road Cess Act, 1871" and "The Provincial Public Works Act,

1877," and to amend and consolidate the law for providing by local rating for the construction charges and maintenance of communications and of provincial public works.

Eight years ago their late colleague Mr. Schalch carried through this Council a Bill to provide by local rating for communications, which was known as the Road Cess Act. MR. DAMPIER would only be paying a just tribute of praise to the memory of Mr. Schalch if he said that owing to the intimate practical knowledge which Mr. Schalch brought to bear on the framing of the Bill, and to the minute attention and care with which, while at the Board of Revenue, he watched its first introduction, the measure had been successful beyond expectation, and it was owing to those causes that there were so few points in which alteration was found necessary in the law. As must be expected, however, in the course of eight years' working some points had come to the surface in which the Act might properly be amended, and they were points of some importance. In 1877 a Bill to provide by local rating for provincial public works was passed, under which the tax was to be assessed on the same principle and collected by the same procedure and by the same machinery as the Road Cess; it was obviously desirable, when the Council was about to amend the earlier law, that they should take the opportunity of consolidating the two.

The important points then in the Road Cess Act which required amendment were four,—two of them in the direct interest of the tax-payer, the other two only so far in the interest of the tax-payer as all measures were for their benefit which facilitated administration.

The main point in the interest of the tax-payer was connected with the levy of cess from what were called lakhiraj or rent-free holdings,—lands which were held rent-free within estates as distinguished from revenue-free lands which were recognized as such and borne on the general register of the Government as revenue-free. As the law now stood, these petty lands which were held rent-free were considered to be part of the estate within which they were geographically situated, and if there was any difficulty in settling that question, an arbitrary discretion was left to the Collector to decide that such land should be included for the purposes of the Act in this or that neighbouring estate. The law required the zemindar in whose estate these lands were so included to enter them in his returns for assessment, and in the first instance to pay the cess due on them, recovering it afterwards from these rent-free holders by the same process as that provided for the recovery of rents from tenants. The duty thus imposed on the zemindars was found to be burdensome and most distasteful. The items recoverable were often numerous, but the amount of each so trifling as to make many of them not worth collection; in one case which MR. DAMPIER had come across it could not be represented in any coin. Moreover, these lakhirajdars were not in the position of ryots dependent upon the superior zemindar or tenure-holder, but were independent and in a normal state of antagonism to them.

For these reasons zemindars and tenure-holders were naturally inclined to do all they could to avoid the acceptance of this liability: it was extremely difficult to identify the lands, and the authorities knew nothing about

them; therefore it was easy for the zemindar or tenure-holder simply to omit entering them in his returns in order to avoid the burden of collecting the assessment; when this was done, the holder of the land thus escaped assessment altogether. On the other hand, if the zemindar, like Maharajah Norendra Krishna, who had been one of the greatest sufferers, was honest enough to include these lands in his returns, he was obliged to pay the assessment of which he could eventually recover a part only.

The main object of the amendment proposed in the Act was to give some relief in this respect. MR. DAMPIER would endeavour to lay before the Council a scheme for the registration of these petty lands, which he hoped would have some effect in making their holders come forward and pay these cesses directly to the Collector.

The second point for the relief of the tax-payer was this. As the law stood, if an estate was divided into two parts by what was known as butwarrah, so far as the revenue was concerned they became two different estates, neither of them being liable for the revenue payable by the other. Unfortunately in the Road Cess Act no provision was made for such cases, and re-adjustments of assessment under the Act could, strictly speaking, only be made after five years had elapsed since the first assessment. Therefore, until the expiration of the five years, each part of the divided estate remained legally liable for the entire assessment imposed upon the whole estate as it existed before partition. There was a similar condition of things where a separate account was opened for the payment of revenue under the provisions of Act XI of 1859.

The other amendments, as MR. DAMPIER had said, were only indirectly in the interest of the tax-payer, but they were required to facilitate the working of the Act. First, as the procedure for the recovery of fines and arrears of assessment was found to be too dilatory and cumbrous, it was proposed to amend the law in that respect. The other point was with regard to the valuation of petty holdings. As the law stood, estates of which the revenue was less than Rs. 100, and tenures of which the gross rental was less than Rs. 100, might be valued by a certain summary process, the assessment so imposed being open to objection by the assessee. The object of this was to expedite matters, and to reduce to a minimum the trouble of the assessee where he accepted the assessment without objection; but no similar provision had been made in respect to lakhiraj property; and therefore, however small a lakhiraj property might be, provided it was recognized as revenue-free and borne on the register of Government as such, it must be valued according to the more perfect and lengthy process. It was proposed to authorize the Collector to value such small lakhiraj properties by summary procedure.

These were the four cardinal points in which the existing Act would be amended. The opportunity would be taken to make alterations here and there in some minor points which MR. DAMPIER hoped would be such as would meet with the approval of the Council.

The motion was agreed to.

The Council was adjourned to Saturday, the 3rd January 1880.

By subsequent order of the President the Council was further adjourned to Saturday the 10th January.

J. A. R.—Reg. No. 11596—200—3-5-80.